UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION Case No. 12-02311

THIS RELATES TO:
ALL ACTIONS

STATUS CONFERENCE & MOTION HEARINGS

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, September 13, 2017

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Detroit, Michigan

Wednesday, September 13, 2017

at about 10:01 a.m.

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(Court and Counsel present.)

THE CASE MANAGER: All rise.

The United States District Court for the Eastern District of Michigan is now in session, the Honorable Marianne O. Battani presiding.

You may be seated.

The Court calls Case No. 12-md-2311.

THE COURT: Good morning. Okay. Let's start here with Mr. Esshaki, if you would please, give us a report.

MASTER ESSHAKI: Yes, Your Honor.

Good morning, everyone. It is a pleasure to see you all again.

We -- the flow of motions have slowed quite a bit. I think we had one or two last month. We had one yesterday. And as of this point there are currently no motions pending, but I believe that we are getting to our motions expeditiously and getting them calendared and heard as quickly as possible with briefing deadlines and so forth.

So from the Master's standpoint, I think we are doing fine.

THE COURT: Does anybody have any questions for the

Master or any comment?

(No response.)

THE COURT: No. All right. Let's go on to our next one, which is the settlements. Who is going to speak on that?

MR. WILLIAMS: Good morning, Your Honor. Steve Williams for the end payors. I believe Mr. Raiter will be up for the auto dealers.

We think we are making outstanding progress. For the end payors, our first round of settlements, which the Court previously approved, we anticipate will be completely final very soon. The second round of settlements that the Court approved, we are only waiting for this Court to enter the judgments that we recently submitted and those will become final.

Since we saw you in June, we have settled an additional 20 cases. We have been working very hard with the mediation team, and we anticipate presenting a motion for approval of notice to the class of those additional settlements in the next probably couple of months with the notice plan to begin in December.

We've filed preliminary approval papers on some of our recent settlements last week. The Court should anticipate many more coming in over this week and next week. New settling defendants include Hitachi, Bosch, Mitsuba and

Nishikawa. We have many more mediations scheduled at present. We are doing them all around the country; we are doing them in Detroit, New York, Washington, San Francisco, and Los Angeles. We have done them both with Judge Weinstein's team, and the parties have also used other mediators with agreement and with the consent of the mediation team.

The end payor settlements now exceed a billion dollars. All of the settlements we have entered into provide for cooperation against remaining non-settling defendants which have been very effective helping us move to the next step and work in resolving further cases.

On behalf of the end payors, we are very appreciative for the settlement team. They have been effective. They have been diligent. They follow up with us on a regular basis to make sure that we are taking actions we need to, scheduling mediations, and working on getting cases resolved.

It took some time perhaps at the outset to get buy-in from all of the parties because the process has to be voluntary and people have to want to participate. I think that has been accomplished.

THE COURT: Are you doing this by defendant or part or defendant within parts? How is this working?

MR. WILLIAMS: In almost all instances for the

indirect purchasers we will work with a defendant usually for all of the cases that that defendant is in.

THE COURT: That defendant is in.

MR. WILLIAMS: There have been one or two instances where a defendant has had an interest in resolving only one case, and that has happened. For example, in Tokai Rika in wire harness resolved just that one case, but there still are other cases. But usually and more commonly, a defendant and the indirect purchasers will try to resolve all cases involving that defendant at the same time.

Thirteen of our cases are completely resolved now. Many of the remaining cases have only a single defendant left, and mediations are being scheduled which we hope would resolve those. And we feel and hope, it may be aspirational, but that the indirect purchaser cases by the end of October will be complete or substantially complete with the assistance of the mediation team and the parties working very hard to get that done.

THE COURT: Wait a minute. Let's say this again. I don't want to get the wrong impression here and have my hopes up. The indirect purchaser cases -- are you talking about all cases or are you talking about --

MR. WILLIAMS: I'm talking about all cases, and it is a goal. Obviously it is voluntary and things may not work out, but this is the effort that we are making now with the

mediation team is to do everything we can to resolve as many of those by the end of October as is reasonably possible. We have a duty to the class to do a good and effective job. Defendants may have reasons in some cases why it is not the right time, but we are making progress and we do have reason to be hopeful.

THE COURT: Okay. I want to tell you while you are reporting, there is a representative here from the mediation team, Ms. Lelchuk.

MR. WILLIAMS: Ms. Lelchuk.

THE COURT: There she is in the back. Can you stand up so everybody can see?

MS. LELCHUK: Hi, everyone.

THE COURT: She came in from the mediation team, and I get a report periodically from Judge Weinstein, and so we've had a discussion on the report and the information and you pretty much just told us about the indirect purchasers, and I am asking just for a little more detail in the JAMS report in the sense of when these things are scheduled and what parts and/or defendants are scheduled. I don't want to know anything about, you know, who is refusing, who is not, I don't want to get into that, but I do want to know a little more detail on the mediation schedule.

MR. WILLIAMS: Understood. I would like to express our things to Ms. Lelchuk and the mediation team because

she's really taken the laboring or in making sure we are all working hard.

THE COURT: Good.

MR. RAITER: The only thing I would add, Your Honor, on behalf of the auto dealers -- this is Shawn Raiter.

We agree with everything that Mr. Williams has said. We are largely in the same position as the end payors. We will be coming in shortly to request leave to serve notice or publish notice on our third round of settlements. So the auto dealers have been through round one and two, the claims period has closed on our round two. If you recall, we were before you by phone recently about an issue to serve some supplemental notice for claim processing and allocation reasons on round two, but we are going to come in shortly on round three and ask for leave to send notice for that third group of settlements. We do also have some preliminary approval papers that you will seeing shortly, most of the same as the end payors at this point.

THE COURT: Okay. Thank you both very much.

MR. RAITER: Thank you.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: I do want to say, we had -- and right now I don't remember if it was a judgment or something, but I want to say to all of you, it is very hard to keep track of all of these parts, we are trying very hard here, but do not

hesitate to call. You know Molly, call her and say, you know, the Judge didn't sign this yet or it is not entered yet. Sometimes we need that. It is -- you know, there might be a miscommunication with the papers, or even we have had with Kay, poor Kay, she has to enter these orders in all kinds of cases. So there could be -- you know, there could be a very good reason why it's not entered; on the other hand, there could be a very bad reason, it just got put in the wrong spot. And with the hundreds of entries that we have here I want to know.

So what I want to say is don't hesitate to call. I was rather insulted that somebody called me to say that, hey, why don't you do -- somebody not involved -- because I'm hoping by now you, who are involved, would not hesitate to call and check on what's going on. I don't hold that, believe me, against anybody. I want you to do that if you have a question. Okay. Thank you.

MR. KANNER: Good morning, Your Honor.

THE COURT: Mr. Kanner.

MR. KANNER: Steve Kanner on behalf of the direct purchaser plaintiffs.

With respect to the current issue of settlements and mediations, we are pleased to advise you that we continue to make good progress in both the first and second tranche of cases. We are working on completing settlements with an

entity which I've already disclosed to this Court before, and that's MELCO, and that's six or seven different products. We are at the final stages of drafting the agreements. And with another defendant, who I may not mention at this point, that also has at least seven additional products which we intend to present to this Court, both of those defendants, that named and the one which is to remain anonymous, by the next hearing, so we should have a number, all together 14 different settlement agreements, by the next hearing.

We also with respect to mediation have at least one mediation scheduled within the next month, and we are working to coordinate several more in the coming months. And, again, Ms. Lelchuk has been indispensable both in terms of herding cats and herding lawyers.

THE COURT: Cats are easier.

MR. KANNER: I'm not sure which is more difficult.

We have at least one more direct meeting with a group of defendants scheduled in the next month, so we, again, hope to have some progress developing on that issue.

THE COURT: Good. Good. Thank you.

MR. KANNER: Thank you, Your Honor.

MR. PARKS: Good morning, Your Honor. Manly Parks, from Duane Morris, on behalf of the truck and equipment dealer plaintiffs.

I'm happy to report that we have an executed

settlement agreement with Mitsubishi Electric that has very recently been signed. We'll be filing a motion for preliminary approval in connection with that settlement perhaps as soon as the end of the week or certainly by the middle of next week at the latest, now with the goal of having a final settlement approval conference perhaps by the end of the year in our next -- our December status conference time.

That represents our first settlement in the starters and alternators cases, so we are pleased about that development. We are in active discussions with all of the defendants in that case and in our other primary remaining case which is the radiators case. So we have -- we do have one defendant outstanding in occupant safety systems, but because of the Takata bankruptcy, that matter is basically on hold. And that represents what's left in our truck and equipment dealer case document.

We are in active settlement discussions. We don't have any mediations scheduled because the discussions are moving forward so far effectively; in many instances direct counsel-to-counsel conversations, in some instances facilitated by Ms. Lelchuk and her colleagues but in all cases overseen by them. So we are checking in, providing status reports, and things seem to be moving forward perhaps not as quickly as we could hope but moving forward very

steadily nevertheless, so we are encouraged.

THE COURT: Okay. Very good.

MR. PARKS: Thanks.

THE COURT: Thank you.

All right. I don't know if defendants have anything else they want to add on settlements?

(No response.)

THE COURT: Okay. All right. The next thing on the agenda is the status of scheduling orders for the subsequent parts. Who is speaking to that? Who put that on?

(No response.)

THE COURT: Nobody. Okay. Well, that's good. Let me ask you this, and I have not checked to see this, but all of the subsequent parts, do you have scheduling orders? Are you working on -- plaintiffs, are you working -- do you have scheduling orders on them? Who can say something about that? Okay.

MR. PARKS: Your Honor, Manly Parks again.

I can speak to radiators and starters and alternators because those are two cases that we were involved in. On radiators we have exchanged several drafts with the defendants of scheduling orders and we've got the conversation down to a few fine points at this juncture. We are hopefully going to be able to work through the remaining items, and to the extent that we can't, you know, we will

certainly present those issues in an expedited way to Special Master Esshaki for his determination, but hopefully we will be able to resolve those issues and then we will be able to present the Court with an agreed-upon order for radiators.

Starters and alternators is a later tranche case but we have decided or been authorized among plaintiffs' groups to take the lead on pushing forward with that and hope to have a draft for the defendants' consideration out very shortly. We have it in the final stages of preparation. So that at least as far as starters, alternators, and radiators goes, that's the status there.

THE COURT: Thank you very much.

Anyone else?

MR. FINK: Yes, Your Honor. The direct purchaser plaintiffs are in the process of negotiating scheduling orders in the second tranche of cases. They are proceeding productively but we don't have a definite time on when we will have that.

THE COURT: Okay. I know the first and the second tranche. What about the third, et cetera?

MR. FINK: No --

THE COURT: Do we have that?

MR. FINK: No, not yet. We want to get the second --

THE COURT: We need to move on with that because the cases have been filed long enough now to have scheduling orders.

MR. FINK: Well, that's what we will do, Your Honor.

THE COURT: Okay. Thank you.

MR. REISS: Good morning, Your Honor. Will Reiss for the end payor plaintiffs.

So we have scheduling orders in a number of cases. In the occupant safety systems case, which is one of the next cases in the tranche scheduled for class cert, we appeared before Special Master Esshaki, we had some differences, I think we are close to resolving those differences, and we are planning on submitting a proposed order memorializing Master Esshaki's ruling hopefully next week.

There are a few other cases that we are working on scheduling orders. I'm happy to say that since we are settling these cases so fast, a number of them are closing so we are not -- we don't have the necessity for scheduling orders, but to the extent there are cases that are still open, we are in the process of negotiating them and we will enter something soon. Thank you.

THE COURT: Okay. Thank you.

MR. KANNER: Good morning again, Your Honor. Steve Kanner for direct purchaser plaintiffs.

I should add that within those cases that we are in the process of settling, those would appear in the second tranche and some in the third tranche. So, again, setting scheduling orders for the cases which are in settlement process --

THE COURT: Waste of time.

MR. KANNER: But the good news is there is progress even without the scheduling order on those cases. And as we reach the point where those cases do require the input of both sides, because we are going to continue to litigate, certainly the scheduling order will flow of necessity from those.

THE COURT: Okay.

MR. KANNER: So I don't want you to be under the impression that we are not moving ahead with that.

THE COURT: What I don't want is these cases just floating out there with nothing; you are either in settlement discussions or you are proceeding by way of having a scheduling order.

MR. KANNER: Your Honor, I can safely say we are on the same page with respect to that.

THE COURT: Okay.

MR. KANNER: Thank you.

THE COURT: All right.

MR. FINK: That's what I meant to say.

THE COURT: Thank you. All right. The next item is the status of assignee plaintiff actions. Yes, come forward.

MR. PATE: Good morning, Your Honor. Drew Pate, Nix, Patterson & Roach, on behalf of group one and the other assignee plaintiffs who have opted out of the second wave of dealership plaintiffs.

THE COURT: How do you spell your name, please.

MR. PATE: Drew Pate, P-A-T-E?

THE COURT: P-A-T-E?

MR. PATE: Yes, ma'am.

THE COURT: And you have filed separate cases, I think, what, 30 some cases maybe?

MR. PATE: 26 cases.

THE COURT: 26. Okay. So you are basically starting from the beginning on individual cases, so you need to get started on whatever -- how are you going to proceed? We need to get you on a scheduling order.

MR. PATE: Yes, Your Honor. And right now we are working with the defendants in the cases we filed for a joint stipulation for an answer and a motion deadline for them. Once we get that -- we hope to have that ready soon to present as to the Court. Once we get that worked out, we intend to proceed with the discovery and request scheduling orders from there. We have in the meantime been working with

defendants for informal production of documents and things like that since some of these cases are so far along so we can be as efficient as possible.

THE COURT: Yes. The cases, some of them, are far along so you have some catch-up.

MR. PATE: Some catching up to do, Your Honor.

THE COURT: Okay. But I do need -- I do need to have you as individual cases put on scheduling orders, and I would anticipate that you, with the defendants, can work on a scheduling order for -- just for the answer, the dispositive motions, and the discovery I would say within the next -- this is the middle of September -- by the end of October.

MR. PATE: Yes, Your Honor.

THE COURT: So let me make a note that by October 30th you will file a scheduling order or you will submit a letter to the Court so the Master can work with you on doing the scheduling order and/or the Court. Somebody needs to get with you if it is not done.

MR. PATE: Yes, Your Honor.

THE COURT: Okay.

MR. PATE: Understood.

THE COURT: Have you -- so have you gotten to a Rule 26 conference yet or --

MR. PATE: We haven't, Your Honor. I guess you could call it that as far as our discussions about some of

the discovery that we intend to seek and I intend to produce and then the response and answer deadlines, but I think we need to get that worked out first and to have our full Rule 26(f) conference.

THE COURT: And how many parts are you involved in -- did you opt out of?

MR. PATE: 26 right now.

THE COURT: 26 separate parts. Okay. All right. Thank you very much.

MR. PATE: Thank you, Your Honor.

MR. CHERRY: Your Honor, may I speak?

THE COURT: Yes.

MR. CHERRY: Obviously we heard you and we will -- the defendants, I'm sure, will be working with the auto dealer opt-outs to do that.

THE COURT: Mr. Cherry, you are working on --

MR. CHERRY: Steve Cherry, for Wilmer Hale, on behalf of Denso, but speaking on behalf of the defendants.

None of the defendants have been served with any of those complaints yet.

THE COURT: You haven't?

MR. CHERRY: No. And so I know some defendants are likely to accept service but I know some will want to be served, and we obviously need service before we start working on these other processes, so that's one thing.

The other thing that we are concerned about is, you know, reading the complaints, there's reference to -- it looks like these -- this -- these opt-outs may have occurred because these plaintiffs still don't know what they would have received from the settlement, and there was a reference to not receiving any money from the first round. This all involves the second round of settlements. That they didn't opt out of the first round but they still hadn't received any money and still don't know how much money they would have received, and so it looks like they have opted out to protect their interest because the deadline for doing so is closing, and, you know, we are concerned about that. I mean, if they -- if they had known what they were going to receive from these settlements, perhaps they would have made a different decision and Your Honor's interest in resolving all of these cases would have been achieved. I mean, that certainly was the defendants' interest in settling with the classes.

So that's troubling, and, you know --

THE COURT: Let's get Mr. Pate up here and have a response. Mr. Pate, could you come back up here, please?

MR. PATE: Yes, Your Honor.

THE COURT: Let's talk, first, what Mr. Cherry said about nobody has been served. Have you not served these complaints?

MR. PATE: We have been attempting to -- like you said, Your Honor, some of these are very far along so we have been attempting to proceed informally with parties accepting service through their represented counsel in the class cases. My understanding from my conversation with Mr. Cherry was that we would be receiving something from them on that as I referred to about a stipulation about accepting service and answering. So it sounds like he and I need to have further discussions about that as far as who is going to accept service based on what we have sent and the complaints we have sent to counsel and who still needs to be formally served, and we will certainly do that. Anyone who does not accept service, we will serve them.

THE COURT: Okay. But that has to be done quickly because if some of these defendants don't accept service, then we have problems, especially for those if you have to go to the Hague, whatever you have to do, could be a --

MR. PATE: Yes, Your Honor.

THE COURT: -- big and expensive project.

MR. PATE: Yes, Your Honor.

THE COURT: I would like a status report from you also by the end of October on service.

MR. PATE: Okay.

THE COURT: And let's talk about what Mr. Cherry said about some of these parties not getting money from the

first round. Well, most of these monies have not been disbursed. Is that what you mean?

MR. CHERRY: Our understanding is none of it has been disbursed from any settlement.

THE COURT: Do you know that?

MR. PATE: Yes, Your Honor. We have been in contact with the settlement administrator on behalf of our clients for those to try to get a status update on the status of the first wave of settlement payments, so we are aware that nobody has been paid, Your Honor.

THE COURT: And are you aware of an amount they may be paid?

MR. PATE: No. We haven't been able to get any information about what the amount they will ultimately receive under the first wave of settlements they didn't opt out of.

THE COURT: Mr. Cherry?

MR. CHERRY: Yes, Your Honor. I mean, our concern is if that's a significant reason for the opt-outs occurring, that something ought to be done about that. That perhaps staying these cases, getting that information to them, and then letting that decision be made. Maybe they would choose to be in the class if they knew what they were receiving from these settlements or maybe they would make the same decision, but at least they would understand what they were giving up.

THE COURT: Well, I think you should be -- let's get a -- let's hear from Mr. Raiter.

MR. PATE: We can certainly talk to the defendants about that and work with the defendants.

THE COURT: Well, it is not the defendants really, it is the plaintiffs who now have the money and the allocation.

MR. RAITER: Your Honor, and the -- one of the reasons for the delay was this last reason we came to talk to you about the allocation of those multi-jurisdictional dealerships. We need to collect any additional information we may have received from dealerships who didn't give us all of the information in light of the kind of first view of how this would proceed. Once we have that, the calculations will be done. We are this close to disbursing round one. We just need to go through that last process, recalculate the numbers and then disburse. So we feel like we are a short number of months -- a small number of months away from disbursing round one. All of the heavy lifting has been done in the claim processing and calculations. It turned out to be much more challenging than we expected or the claim administrator expected because dealerships were providing us different forms of their data; somebody would give us their data in one way, another would give us in another way. There has been a lot of follow-up by the claim administrator about what does

this mean. Sometimes they would just give us bulk numbers of vehicles, they didn't break it down by models or years and we would have to go back.

So we are to a point where we should be the first group to actually disburse money to class members, but it is just a couple of months away is what we expect, and I'm knocking on wood, crossing my fingers, doing everything possible that's true. We want to get the money out.

The good news for us is as soon as we get round one out, round two should follow relatively smoothly because all of the systems and calculations and databases are in place, and the majority of dealerships are participating in round two. We do have some new dealerships, hundreds of new dealerships that have submitted new claims, but those are being processed as we speak, so we think round two will follow shortly after round one once it finally gets out.

THE COURT: Well, let's discuss then with Mr. Pate, I'm not sure, because I don't think we got a clear answer here, are you thinking that you are going to proceed with the case or do you want to know what this amount is because maybe rather than having defendants who have already gone through this once that do the -- participate in the discovery, maybe we need to wait and see what the amount of money your clients might be receiving to see if they want to proceed.

Because I will tell you this. If you decide to

proceed, you have to proceed and it is going to be expensive. I mean, you could talk to these folks; from everything I have seen, it is astronomical. I don't know where your funding is or how you are doing it, but I would expect the same thing from you. So I'm not treating you differently as an individual. In fact, as an individual I would assume you could proceed much faster than what our class actions have.

But, please, don't take this -- I don't care that you have opted out, and to do one individual case on this might be very, very interesting, but it is also going to be very expensive. And so I want you to seriously consider what is it that you are looking for. I'm not talking settlement. I'm talking about are you looking for the amount of money so you know whether you want to proceed or not? And if that's the case, you know, tell me and tell me now because I will stay these proceedings so you don't have to proceed with service and they don't have to proceed with -- they, I mean defendants -- don't have to participate in any other parts of the litigation right now.

So, you know, discuss it, let us know if you want to stay. I don't think Mr. Cherry or other defendants would object until after the distribution maybe of both parts, I don't know, since Mr. Raiter tells us the second allocation is ready to --

MR. PATE: Understood, Your Honor. Right now our

intention, as I said, was to proceed. Our clients were in a situation where they were up against certain deadlines and needed to preserve their rights, which they felt they needed to do by opting out, but I hear what you're saying and it makes a lot of sense. So I would like to discuss with my colleagues and clients, and we can work with the defendants and plaintiffs on that to see if that makes sense.

THE COURT: Okay.

MR. CHERRY: Thank you, Your Honor.

MR. RUBIN: Your Honor, on behalf of Yamashita, we have also been sued by the opt-outs. Our case -- sorry. Michael Rubin, Arnold & Porter, for Yamashita defendants in the AVRP case.

We are a wave three settlement for which there's preliminary approval but no motion has been filed for final approval so there has been no opt-out period, but we got looped into these cases. So the interest in -- hopefully they won't opt out from round three if they see how much they are getting from round one and round two from the settlement.

So I just wanted to, first off, clarify the record that I think there might be another couple defendants as well in a similar situation, but hopefully if we put these cases off a little bit or if they want to simply dismiss my client, I'm always happy with that, they may decide never to actually bring an opt out of wave three cases.

THE COURT: Right, right. I think you understand what's being said, and certainly once you know in round one you are being treated -- your clients are being treated like all the other --

MR. PATE: Yes, Your Honor.

THE COURT: -- clients and what sums you are getting there, nobody can say -- well, I guess we could say in the second round, but we certainly couldn't say in the third round yet what you are going to get, but obviously -- well, it's up to you. The bottom line is it's up to you, but let's try to take care of this logically because we don't want to create any more work. I mean, these attorneys are working hard enough without --

MR. PATE: I understand, and that's what we have been trying to do, Your Honor, we have been trying to work with people and defense counsel as best we can.

THE COURT: Okay. I'm going to ask that you submit to me either -- well, by letter what you plan to do because if you are going to continue the case, then I want to say that I still need your October 30th schedule and status of service report, but if you are willing to stay, just that you are preparing an order, you know, a stip and order to stay the cases. Okay.

MR. PATE: Yes, Your Honor. Do you have -- is there a date that you want that letter by?

THE COURT: Well --

MR. PATE: We will get it to you as soon as possible either way.

THE COURT: Do you think a week is enough time for you?

MR. PATE: Yes, Your Honor.

THE COURT: So let's say -- today is Wednesday -- next Wednesday, that would be September 20th.

MASTER ESSHAKI: Your Honor, could I ask to receive a copy of that letter as well?

THE COURT: Absolutely.

MASTER ESSHAKI: Thank you.

THE COURT: So you will send it to me and the Master.

MR. PATE: Yes, Your Honor.

THE COURT: Okay.

MR. CHERRY: Thank you, Your Honor.

MR. RUBIN: Thank you, Your Honor.

THE COURT: Good. I'm glad we talked about that.

All right. The next item is dates for the next status conference. Now, I've been thinking a little bit about this because our agendas are very short now except for the motions, and I'm thinking of canceling the December meeting. Is there anybody -- I should probably get your input before I even have said that, but is there anybody that

thinks we need to proceed?

(No response.)

THE COURT: No. Okay. Let's cancel the status conference. I would like, however, the -- a copy of the status report to still be filed because I do follow that closely, so I would appreciate that if you would file by December 6th a status report so we will have the --

Mr. Hansel, where are you?

MR. HANSEL: Yes, Your Honor.

THE COURT: You are doing these status reports still?

MR. HANSEL: Well, my partner, Randall Weill, did the last one with the able assistance of our star paralegal Sonya Belanger (phonetic), who really deserves a lot of credit.

THE COURT: Well, somebody deserves a lot of credit because they are really detailed. So I just want all of you to know, and your paralegal, if you would inform him or her, that I really appreciate it. They are done very well. And I thank you, and I would still like it to come in this December. Okay.

MR. HANSEL: We will do, Your Honor. And, of course, everyone in this room was integral in getting it done, and we appreciate that.

THE COURT: Thank you.

MASTER ESSHAKI: Your Honor, just to remind, we are going to keep open the Master's hearing date on the 5th.

THE COURT: Thank you. Yes, on the 5th, which is the day that you would have hearings before the Master, we are going to keep that date still open for the Master if there is anything on. If there is nothing scheduled, what, within a week or ten days?

MASTER ESSHAKI: Yes, Your Honor.

THE COURT: Yeah, if there's nothing scheduled, how about ten days?

MASTER ESSHAKI: Perfect.

THE COURT: Ten days before that, then it is going to be canceled, the Master's hearing will be canceled. Okay.

And then our next scheduled conference, which we will keep, is February 28th, February 28th. Again, if you need dates for anything before that, just call to get dates scheduled. All right. It is just everybody is not going to have to come in on that date. Okay.

MASTER ESSHAKI: And we will keep open the 27th for another Master motion hearing?

THE COURT: Yes.

MASTER ESSHAKI: Thank you.

THE COURT: And then the next date, which would be three months, I guess we are going to see if we can go back to that, is June 6th. Is there anything anybody knows of

that is now scheduled for June 6th? So the next date will be June 6th with the Master's hearing June 5th.

Does anyone have any other matters that they need to bring up?

(No response.)

THE COURT: Nothing. You are so cooperative. Did anybody in Texas get hurt by that -- nobody here is from Florida but one of you is from Texas, right?

MR. OCHOA: Yes, Your Honor, everything was fine. Thank you.

THE COURT: And I know our new opt-out, you're from Texas, I could tell by your accent.

MR. PATE: Yes, Your Honor. Thank you.

THE COURT: You're okay.

MR. PATE: Thank you for the kind ways.

THE COURT: Okay. Very good. Then we will see you in the snow in February. Thank you.

We will start our motions -- let's take a ten-minute break, and then we'll start the hearing on the motions.

THE LAW CLERK: All rise. Court is in recess.

(Court recessed at 10:40 a.m.)

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(Court reconvened at 10:54 a.m.; Court, Counsel and all parties present.)

THE LAW CLERK: All rise. Court is again in session. You may be seated.

THE COURT: All right. The first thing we have is TED's motion for final approval, but that's set for 11:15.

MR. SHOTZBARGER: That's correct, Your Honor. William Shotzbarger, of Duane Morris, for the truck and equipment dealer plaintiffs.

That's a set time, 11:15.

THE COURT: Yes.

MR. SHOTZBARGER: When the notice of the hearing went out it said TBD, but we updated the website to say 11:15.

THE COURT: Okay. Let's hold this for 20 minutes. We will do another motion and then come back to you.

MR. SHOTZBARGER: I think that makes sense, Your Honor. Thank you.

THE COURT: And then the next motion is the direct purchaser's motion to approve supplementary discovery and deposition protocol.

MR. HOESE: May it please the Court, I'm William Hoese, H-O-E-S-E, for the direct purchaser plaintiffs.

The first thing I would like to tell the Court is I want to assure you we are not here to ask you to consolidate the two cases. What we are here to do is to ask that the Court order -- or to authorize us to begin discovery in the

Dalc action, D-A-L-C.

The case was filed in June 2015. The Court last December consolidated the Dalc case and initial bearings case for discovery, and Your Honor wrote at time that given the current procedural posture, judicial economy is better served by keeping the cases together for pretrial discovery.

However, the defendants' position, as I read it, would effectively nullify the Court's order combining the cases for discovery.

THE COURT: No, they don't want to do any discovery until after your class cert --

MR. HOESE: That's correct, Your Honor. After -- that's correct, Your Honor. As I said, this case has now been pending since 2015, June 2015.

THE COURT: So if your class is not certified, presumably that's the end of that and everybody goes away, right?

MR. HOESE: Well, at this juncture, because the cases are separate, I would have to disagree with that, Your Honor. Apparently we would go forward with the second case, the class certification, the way things stand right now. If the Court were to later consolidate the cases, we might have to take a look at where we are, but right now we are on two separate tracks, and what we are asking the Court to do is to approve our supplemental discovery plan for the Dalc case

because we have not obtained any discovery, no documents, no deposition discovery, no interrogatory responses.

And I want to emphasize too that earlier when the defendants opposed consolidation, they said it would be prejudicial to allow the claims that were brought in the Dalc case, which in effect are the same claims in the original case, and they said that their ability to defend against the claims, this is in the Dalc case, were prejudiced due to the passage of time and the failing of memories. That was two years ago.

So for us we think it is prejudicial not to allow us to go forward. Our experience in the initial case with -- at least my experience with one of the defendants is the conspirators, some of them, were at a very high level in the companies, they were older and they have since retired, and they declined our offers to be deposed, and these are people who were maybe in Germany, in Japan, in France and Sweden. So if we can't get discovery started now, realistically it is possible we may never have an opportunity to depose conspirators just because they happen to meet with their competitors in Europe as opposed to the U.S. or in Japan where we have gotten the discovery.

One thing I would like to emphasize is that taking discovery in the Dalc case will have no effect on the current class certification schedule, no effect, and that's moving

forward. The defendants' part is actually done now. We filed our brief, they filed their opposition, their Daubert motions were filed, and they have deposed all expert witnesses. What's left is our filing of our -- deposing their experts and filing our reply in mid-November, so...

THE COURT: And the scheduling order that you propose, there has been nothing, as I see, in these briefs objecting to the scheduling order; it is objecting to the discovery period?

MR. HOESE: That is the defendants' current position as I read it, yes.

THE COURT: All right. Let's hear what they have to say.

MR. HOESE: Thank you, Your Honor.

MS. KAFELE: Good morning, Your Honor. Heather Kafele, K-A-F-E-L-E. I represent the JTEKT defendants, Koyo France, Koyo Deutschland, and I will be speaking on behalf of the bearings defendants in both cases.

So I want to address the discovery issue that Mr. Hoese talked about first because I think he sort of took the consolidation point off the table. What I hear him saying is, listen, we've been trying to get discovery, we've been waiting two years and we can't wait anymore. And I would like to put that in a little bit of context, Your Honor, because from my perspective, this really ignores a lot

of the reality that has happened in this case, and it is a bit of a manufacture delay problem.

If you recall, the European Commission decision came down in March 2014. It was that decision that the plaintiffs came to you and said because of that decision, we want to add the European defendants to this action, but they did that one year after that decision, Your Honor, in June of 2015. So they waited a whole hear after that happened.

Then what happened next? In 2015 did they try to seek discovery -- enter a discovery plan? No. Did they do it in 2016? No. They waited until August 2017 to come before you and say now we need a discovery plan and it's urgent. Question why they have waited two years since this case was filed, three years since the European Commission case is filed, and all of a sudden it is an urgency as though we are causing this problem. It's a manufacture delay.

And frankly the biggest issue for us here is where we are in the case. We are less than four months in the initial case from the class certification hearing, four months. At that hearing we are going to -- or as a result of that decision we are going to get some insight into what is left, if anything, of both of these cases.

So to start discovery now in Dalc after all of this delay of two and three years that frankly was their own making when after the class cert decision, we are going to

really understand what's left. Is there a case at all? Has the case been narrowed? And as a result of that, we will understand what discovery really makes sense and is necessary.

If we start today, it's a very strong likelihood, Your Honor, we are going to be indulging in discovery that might not even be necessary. And the reason this is important is because these are defendants in groups of defendants who have already produced 13 million documents. We have subjected our -- we made our witnesses available in 60-plus depositions. And to require us to go and do this again in this later filed case when it might not be necessary and we don't understand exactly where the scope of that case is, frankly -- and the delay that's already been happening, I see no reason why they can't wait another period of time. And then once we get that ruling, we figure out what's left and what needs to happen after that.

THE COURT: It may all be left, you don't know, right?

MS. KAFELE: Correct.

THE COURT: In terms of the millions of pieces of paper, I assume they already have -- plaintiffs already have those 30 million pieces of paper so I don't see you having to do that again. I do see the depositions, and he's raised some interesting issues with the depositions in terms of the

people who need to be deposed, their age, et cetera.

MS. KAFELE: Right. But, Your Honor, first of all, on the documents, they are asking for documents from the European entities as well, comprehensive document requests that as drafted are voluminous.

Second, on the witnesses, they are asking for new witnesses from European entities that haven't been deposed before. I have some sympathy; they are worried about people retiring, et cetera, but this case has been going on for two years. They have done nothing to contact us with a list of people and ask if those people are going to be retired. They have taken no steps, and now sort of on the eve of a decision that's going to probably clarify a lot of what's left, all of a sudden it is urgent. I suggest it's actually because they want to get evidence that they are potentially going to use in our class case or use to delay the future cases.

So I -- our proposal is not no discovery ever, we are not saying that. What we are saying is let's take this in reasonable steps. Let's have the class cert hearing, let's get that hearing decision. We will evaluate then, both sides, what's left here. What's the class cert case in the second -- what's the class cert hearing in the second case going to look like, what discovery is necessary as a result of that, and come up with a plan that makes sense to proceed in that second case.

To do it now is going to be extremely burdensome on the defendants who have already incurred a lot of expense and this Court frankly with a lot of motion practice that is going to be related to these issues.

I think, you know, you had asked Mr. Hoese if the defendants had any objections to the scheduling order. We object to any scheduling order being entered at this time. We have not made line items or line edits to this particular order, and we would have such because the way it's written right now is if you enter that order, we are going to be producing documents and initial disclosures within 20 days. That would cause -- that's going to be directly relevant to the class hearing that's coming up, it's going to potentially delay things. That's something we don't think is necessary for anybody.

THE COURT: Okay. Whichever way, it is not delaying the class hearing, God willing, I'm telling you that. This is --

MS. KAFELE: I mean, that's not clear -- that's not even clear because there will be information produced before the January hearing. I don't know, are they stipulating --

THE COURT: It is clear. Listen to me, it is clear. It is not delaying the class hearing.

MS. KAFELE: Okay.

THE COURT: I mean, other things might intervene,

we know that, hopefully not, but this is not delaying the class hearing.

MS. KAFELE: Okay.

THE COURT: Let's hear the reply.

MR. HOESE: The only thing I really have to say, Your Honor, is, of course, since it will not affect the class certification hearing, is that we have given the -- we have served discovery requests on the defendants in Dalc that answered the complaint in December 2015.

THE COURT: You served the discovery requests in December of 2015?

MR. HOESE: We did, and we were told repeatedly that there would be no discovery provided to us pending essentially Your Honor's decision on the motions for personal jurisdiction, so although we have tried, we tried to engage the defendants earlier, we were brushed aside.

THE COURT: When was the motion for personal jurisdiction decided?

MR. HOESE: In March of this year, Your Honor. So we promptly moved after that, and this is where we find ourselves now.

THE COURT: Okay.

MR. HOESE: Thank you very much, Your Honor.

THE COURT: All right.

MS. KAFELE: Just briefly, Your Honor, I would say

on that is I understand that they served discovery requests and I understand that at that time the defendants took the position it doesn't makes sense to do discovery while personal jurisdiction is pending, but two points on that. One, there were some defendants who were not subject to personal jurisdiction motions so there was nothing prohibiting them from coming to the Court and saying we want a discovery plan in place then. The same motion that they are seeking today they could have sought a year ago, two years ago, even though the defendants had objected at that time. So I understand their point.

And also I would note that when the Court decided to consolidate or coordinate the discovery in the two cases, that was in December of 2016, at that point in time they didn't say, okay, let's sit down and get a discovery plan in order or -- and if defendants objected, come to you with this motion at that time. They waited again another eight months to even file the papers or engage with us.

So I would again just reiterate to the Court that there has been continual delay in this Dalc case on behalf of the plaintiffs, and to suggest now they can't wait just a little bit longer to gain more clarity that would provide sort of an efficient, logical approach to these cases just rings a little hollow. I think we are all going to benefit by knowing more of what's left.

THE COURT: Okay. I will tell you, I -- maybe these motions certainly, maybe and certainly don't go together, do they? Certainly these motions could have been brought at an earlier time, but there is I think a reasonable and logical reason why they weren't. And I have been loath to delay anything and I don't intend to delay this discovery. I think we are really not on the eve of a decision. I mean, we are looking at four months now almost before argument on the class cert and a couple of months for a decision, I don't know. So we could be at a minimum of six months away from a decision on class cert, and I don't see any reason to delay the discovery on -- for six months, it doesn't help. I am not delaying the class cert for you to search for something in this new discovery but I think the discovery needs to go on.

I appreciate what you are saying about the scheduling order, that you have not gone over it line by line because of this motion, so I'm going to ask you two to get together and develop a scheduling order. If you cannot, then I want you to ask the Court for a scheduling conference so I can put one in order, and I would say that you should have a scheduling order in place by -- do you think three weeks would do it?

MR. HOESE: For us that would be fine, Your Honor.

THE COURT: Defense?

MS. KAFELE: Yeah, I think that's fine.

THE COURT: Okay. So let's say three weeks. All right.

MR. HOESE: Thank you, Your Honor.

THE COURT: Motion is denied. I'm sorry, the motion it granted. This is defendants' motion. Okay.

So the second motion, which actually is plaintiff's motion to approve discovery plan, I guess I have to say for the computer it is partially granted and partially denied because of the -- I'm not approving the discovery plan, I'm only approving the fact that there be a discovery plan.

MS. KAFELE: Your Honor, just for clarification as well, the motion was two parts; it was the discovery plan and the consolidation coordination. So I don't think we've argued or presented on that issue. So just that the order be clear that it is only relating to the scheduling.

THE COURT: That is only relating to the scheduling. I'm not going to hear any motions about the coordination at this point. Let's get the scheduling. It will remain as is in terms of we are proceeding with discovery in this case on both cases but not consolidation at this point except for discovery.

MS. KAFELE: Thank you.

MR. HOESE: Yes, Your Honor.

THE COURT: So we are not changing anything.

All right. And our next are the air-conditioning systems. We have a few minutes.

THE LAW CLERK: It's 11:15.

THE COURT: It's 11:13, Molly. Yeah, I think we are close enough to start on it. You're right. Let's go back to the truck and equipment dealers.

Okay. This is the truck and equipment dealers' motion for final approval of settlement with certain defendants, and certification of the class, and allocation and attorney fees. I think you have two other motions too.

MR. SHOTZBARGER: Yes, Your Honor. And I believe there was an issue with our motion for approval of allocation plan that was raised by one of the defendants, and I think we are perhaps going to put that one on hold.

Mr. Davis, do you have any more --

MR. DAVIS: No, I think it is best to put it on hold.

THE COURT: It is what?

MR. SHOTZBARGER: Okay. So there was an issue with our motion for approval of allocation plan related to claims that had -- state law claims that had been dismissed, and this was spotted after the motion was filed on Thursday and before we arrived today. So we are -- if it's okay with the Court, we would like to put that motion on hold to rework the allocation plan for all of the bearings settlements, which is

permissible under Your Honor's prior order. We would just have to amend it by a written submission to the Court, and we would just take care of the prior allocation plan and this allocation plan, which is going to be the same for all of the bearings cases, the bearings settlements. So we will submit another motion by the end of this week or early next week at the latest --

THE COURT: Okay.

MR. SHOTZBARGER: -- and we will take care of the allocation plan, but, of course, the allocation plan is going to come after final approval anyway. So we would like to stick with the final approval motion and the motion for attorney fees.

THE COURT: We will.

MR. SHOTZBARGER: Thank you, Your Honor.

Again, this is William Shotzbarger on behalf of the truck and equipment dealer plaintiffs.

Your Honor, this -- the current motion for final approval covers three settlements in the bearings case, but more importantly, this completely resolves the bearings case for the truck and equipment dealer plaintiffs.

The three defendant groups at issue for this position are SKF USA, NSK defendants, and the Nachi defendants.

These three settlements total $4.475 million in

cash benefits. Added together to the prior bearing settlement for the bearing case, overall the total is $10.49 million in cash benefits.

In addition to the cash benefits, certain settlements, specifically Nachi in this round, provided and did provide and did provide cooperation which we believe was really instrumental in securing other settlements that are here this round. That that cooperation was very timely because it came not at the very end of the case but there were certain defendants who were, like we would say, the last one standing. And so Nachi's cooperation was, in our opinion, very crucial to the settlement as that was one of the terms included in the Nachi settlement agreement.

And as we have set forth if our moving papers, these settlements are meaningful, substantial, fair, reasonable, and adequate, and they should be granted final approval.

Each settlement has similar language defining the class; any variations are insignificant. Of course, we are representing dealers of medium duty, heavy duty trucks, construction equipment, agricultural equipment, other vehicles who indirectly purchased bearings that we allege were price fixed and affected by the defendants' conduct.

The specific definitions for each settlement class are included in the respective settlement agreements. These

settlement agreements are public and have been public and they are a part of the record in this case.

The chart on page 3 of our motion sets out specifically the cash benefits, and the amount of each settlement was a result of several factors. We weighed the evidence of that defendant's conduct and our assessment of it. We also weighed the volume of commerce that we as plaintiffs believe was affected or potentially affected, and we also weighed the value of non-cash components of the settlements such as cooperation.

Accounting for the likelihood of success on the merits, the strength of the defendants -- the strength of the defenses asserted by all of the defendants specifically for damages, the volumes of commerce, the risk in proceeding and other risks involved in any litigation, we think the settlements truly represent a great outcome for the class of truck and equipment dealers.

Regarding notice, notice was provided according to the notice plan approved by this Court. This notice plan was similar to the approved plan previously approved by the Court in bearings as well as earlier cases. Specifically for the truck and equipment dealers, those earlier cases would be wire harnesses and occupant safety systems.

The notice plan was believed to be reasonable and appropriate by RG/2 Claims. They are a firm with a lot of

experience in this field and the firm that we've hired with the Court's approval to handle notice and claims administration once that process gets going. RG/2's opinions are set forth in the declaration of Tina Chiango who was -- her declaration was attached to our moving papers.

We used the settlement website which was already up and running; truckdealersettlement.com. Notice was e-mailed to approximately 51,000 executives at truck and equipment dealerships. We also used registrants on the website who had signed up for earlier notice in the earlier cases. So after adjusting for mail that was not delivered as well as adding certain online registrants, notice was mailed and we believe delivered to about 43,000 truck and equipment dealerships.

Further, advertisements regarding the settlements were published in the Wall Street Journal, Work Truck magazine, Automotive News and the weekly newsletters of the National Trailer Dealers Association as well as the American Truck Dealers.

Finally, notice of the settlement was also released via a PR newswire.

In our opinion, the notice program was thorough and was designed to reach and did reach a large percent of potential class members.

The reaction to the settlements has been overwhelmingly positive. There have been no objections,

there have been no opt-outs. This is significant, we think, because these are sophisticated commercial businesses with individuals who are aware of the legal process. They are in a position to speak up if they are not happy with it or if they were to raise any issues. They have not done so, and we think that really speaks volumes.

We believe the requirements of Rule 23 are satisfied by the settlements. The Sixth Circuit sets forth seven factors. The first, likelihood of success on the merits weighed against the amount and form of relief in the settlement.

When we weighed the risks, we noted that we were providing large cash benefits to the class. These are in no way nuisance value settlements. The lowest settlement is almost half a million dollars and the largest is over $3 million, so we are providing substantial cash benefits to the class.

The second factor is the complexity, the expense and likely duration of further litigation. I don't think I need to speak too much on this point. The Court is well aware of these factors in the bearings case. This is one of the most complex cases pending in the country and certainly one of the largest.

There is a -- there would be a significant expense were the parties to pursue this case, both the plaintiffs and

the defendants.

Regarding duration, we did not have a motion for class certification deadline scheduled. Litigation could have gone not forever but quite some time until the OEM third-party discovery issue was concluded. And as the Court is aware, that too is a very expensive issue and process that remains ongoing.

Finally, experts is a big cost in any indirect purchaser case, and that would be a further factor leaning towards resolving these cases.

Our opinions are set forth in the moving papers and are being set forth today. We would not be here today if we did not think that these were reasonable and fair settlements for the class.

The fourth factor, the amount of discovery has been extensive. There were over 50 depositions. There were millions and millions of pages produced, and the amount of third-party discovery not only with the OEMs but the defendants in bearings actually subpoenaed unnamed truck and equipment dealers. So all of these factors lean towards a great amount of discovery that had been conducted through the time we moved for preliminary approval and now final approval of these settlements.

Again, the reaction of absent class members was positive. No objections, no opt-outs, and we believe they

have spoken with their silence.

The sixth factor, there was not any fraud or collusion in negotiating the settlements. The Court has seen how hard fought the bearings case has been for us and is being fought by the other plaintiffs. Negotiations for the truck and equipment dealers settlements took place over many months in person, over the phone, through e-mail, with consultation done by the experts as well. The parties were always at arm's length with one another.

And finally, we certainly believe these settlements are in the public interest. Settlements generally are, especially when resources here are being diverted to the class members instead of funding for the litigation.

These settlements meet the requirements of Rule 23(a) and Rule 23(b). Numerosity. Joinder here would be impractical. We alone had 29 named plaintiffs all part of the Rush Enterprise Company. We sent notice to 40,000, 50,000 truck and equipment dealers, so there's simply too many parties to join with the case.

Commonality. Common questions of law generally occur in price-fixing conspiracy cases such as this one. The main question was did the defendants enter into an illegal arrangement to affect the price of bearings, and that question was common for all plaintiffs and all defendants.

Typicality. The claims of class representative are

indistinguishable from those of any absent class members.

And finally adequacy. The class representatives have adequately and fairly protected the interests of the class in our opinion.

There is one more issue for final approval I did want to mention to the Court and as we set forth in our moving papers as well as the preliminary approval papers. The settlement agreement with the JTEKT defendants, which was -- our first round of settlements in bearings contained a Most Favored Nation Provision in which -- which will be triggered because of our settlement with NSK. The provision required a subsequent settlement after JTEKT with a defendant who pled guilty in the United States. The difference of the settlements would be paid back to JTEKT. And so we are proposing that a portion of the NSK settlement be paid back to JTEKT; that amount is $90,000.

The reason we agreed to this with JTEKT was it was a very essential term to them, and we are still going to provide over $3 million in settlements for JTEKT defendants -- for the JTEKT settlement class as well as over $3 million for the NSK settlement class. And for all the numbers we have set forth, it is the net settlement amount after that $90,000 pursuant to the Most Favored Nation Provision is paid from the JTEKT -- excuse me, from the NSK settlement amount to the JTEKT defendants.

The reason this makes sense in our minds is weighing the risks of litigation against the form of relief being sought, we easily would have burned through $90,000 in litigation expenses had we pursued the case against NSK alone. Simply the costs of the document database would have -- for one month would have cost $90,000. And so we thought it made sense to get everything we could from NSK and trigger the MFN, the Most Favored Nation Provision in JTEKT.

In sum, the settlements are fair, reasonable, they meet the Sixth Circuit factors as well as the Rule 23 requirements, and we respectfully ask that they be granted final approval.

THE COURT: Thank you. All right. On this motion the Court is aware of the settlement amount that the TED plaintiffs will receive; $1,100,000 from SKF, $475,000 from Nachi, and $3,170,000 from NSK, although from the -- it is to be noted that that NSK, it includes a $90,000 -- or the settlement includes a Favored Nations offset of $90,000 to JTEKT, and therefore the -- that amount is $3,170,000; isn't that correct?

MR. SHOTZBARGER: That's correct, Your Honor.

THE COURT: That was my understanding. Okay.

And the Court notes that with the previous first round settlements, it comes to roughly $10 million that is the total settlement amount, is that correct, on bearings?

MR. SHOTZBARGER: It is about ten and a half million, Your Honor.

THE COURT: Ten and a half million. Thank you. All right. And we know, of course, in addition to the money, there is a cooperation in the prosecution of claims against the remaining defendants.

I would like to start with notice because it is 11:30 here almost and nobody has come here to object, nobody has filed an objection, and nobody has opted out in this settlement. And we know that the notice went to -- through mail and e-mail to approximately 51,794 executives representing truck and equipment dealership addresses in the United States, and I think you also published in the Wall Street Journal.

MR. SHOTZBARGER: Correct, Your Honor. Wall Street Journal, Automotive News, Work Truck Magazine, as well as those newsletters that I mentioned.

THE COURT: Okay. So the notice the Court is satisfied is certainly adequate and, again, the Court notes that the fact that there were no objections and no opt-outs are a reflection of the satisfaction with the settlement.

The first issue is to determine if this settlement is fair, reasonable and adequate, and the Court finds under Rule 23(a) that -- 23(e)(2), excuse me, that the settlement is fair, reasonable, and adequate. The Court considered the

factors that you just put forth on the record as set forth in our rule.

We look at the likelihood of success weighed against the amount and the form of the settlements offered, and the Court finds that this factor, as described by counsel, has been fully outlined. Counsel believes the settlement is excellent, and the Court agrees with this.

It is complex, this case, and expense goes without saying as we have been dealing with this, and the expenses, of course, are in the attorney fee motion I believe laid out more clearly. It's very expensive, and to continue the litigation would be -- create even greater expense. So it eliminates the expense and any delay from -- with respect to the settling defendants and it ensures a substantial payment to the settlement class.

The judgment of experienced counsel is considered, and you've laid out, Counsel, what you have done, and the Court agrees that your judgment is to be given high credence. I find you to be -- all counsel actually to be well -- extremely well qualified, and I feel that the information and the discovery that you have done enabled you to evaluate both the strengths and weaknesses of your case.

The Court notes in terms of reaction of class members, I've already referenced that there were no opt-outs or objections.

The settlements have gone on with experienced counsel litigating at arm's length.

And certainly the next factor, the public interest, is satisfied in resolving claims such as this which are notoriously difficult and unpredictable.

So, in sum, the result appears fair and reasonable in light of the expense, duration, and uncertainty of continued litigation in these complex claims and numerous issues, so the Court approves the settlement.

I found -- I said this in the beginning I believe -- that the notice was proper and that class members were, and the public, sufficiently notified of what was going on in this case.

The settlement class issue, that is, should the settlement class itself be certified pursuant to Rule 23 for purpose of effectuating the proposed settlement, and the Court finds it should. Under Rule 23(a)(1), class certification is appropriate where a class contains many members that joinder of all would be impractical, and here we know this class there were, what, 43-some thousand, over 40,000 notices sent, that this class is very numerous and also geographically dispersed throughout the United States, so that qualification is met.

In terms of the next one, which is the commonality, questions of law or fact common to the class, you stated

those, but also the Court notes that antitrust price-fixing conspiracy cases by their nature deal with common legal and factual issues about the existence, scope, and effect of the alleged conspiracy. Whether defendants engaged in a combination and conspiracy amongst themselves or stabilized the price of the component parts sold in the United States are common questions that exist for the whole class.

In terms of typicality, the claims of the representative parties must be typical of the claims of the class, and here typicality is satisfied because the truck and equipment dealer plaintiffs' injuries arise from the same wrong that is allegedly injured -- that has allegedly injured the class as a whole.

In terms of adequacy of representation in which we are talking about the named plaintiffs' adequacy and counsels' adequacy, and the Court finds that the plaintiffs' representatives will fairy and adequately protect the interest of the class.

And also I want to note that the allocation plan as it stands and I think will still stand does not give any preference to the named plaintiffs outside of the service awards.

MR. SHOTZBARGER: That's correct, Your Honor. The allocation plan is going to be based on points as we have done in previous cases. It will be based on models of

vehicles that we know or at least highly, highly believe were affected, the parts of those vehicles, and so it would be based off of that and, you know, we agree that allocation plan will not be preferential to any of the named plaintiffs.

THE COURT: Okay. Thank you.

And then next turning to Rule 23(b)(3), that the class plaintiffs demonstrate common questions predominate over questions affecting only individual members, then the class resolution is a superior method. And here the global conspiracy theory suggests the existence of shared issues relative between the scope of the conspiracy, the market impact, et cetera. The evidence to the Court clearly shows a violation to one settlement class member, it is common to the class, and will be a violation to all. So a class action is the superior method to adjudicate these claims. Certainly doing this individually would be impossible.

All right. The Court therefore approves the class as defined in the -- the settlement classes as defined in the settlement agreement.

The next issue, of course, is the allocation plan, and we are holding the allocation plan for future discussion.

The last is -- motion that you have is the attorney fees and the service awards, I believe. So do you want to address that?

MR. SHOTZBARGER: Yes, Your Honor. First, the

motion is for attorney fees and reimbursement of litigation expenses. We are actually not seeking service awards this round because service awards were ordered in the first round of settlements.

THE COURT: Okay.

MR. SHOTZBARGER: And the --

THE COURT: I added that note because I didn't know you had that already. You did that already. All right.

MR. SHOTZBARGER: And just one final note with the final approval. After a final approval order is entered, as we have done in the past, we will confer with the defendants about judgments that we will submit for the Court to enter for defendants, and we'll make sure to coordinate with the defendants on that after the final approval order is entered.

THE COURT: Okay. Then you have your attorney fee argument.

MR. SHOTZBARGER: Yes, Your Honor, on the motion for attorneys' fees and reimbursement of litigation expenses. This motion for attorneys' fees and reimbursement of expenses covers the period of January 1, 2017 through July 31, 2017. As the Court is aware, this was a very active period in the bearings case. Discovery was truly going full throttle at the winter and the beginning of spring of this year.

THE COURT: Let me ask you about the reimbursement of litigation expenses. You list in your attorneys lists

paralegals at, I forget, close to $400 an hour; is that right?

MR. SHOTZBARGER: Yes, Your Honor. One paralegal is $395 an hour, one is $245 an hour. Those are experienced paralegals who have worked at Duane Morris longer than I have, and those are the rates that we would normally bill them out to for our hourly billing clients. They are Duane Morris employees, they are paralegals, and they are in some sense integral to our prosecution of these cases, the reason being that they pick up a lot of the work dealt with prepare for depositions, attending depositions, getting documents translated for depositions, as well as just arranging the information that we need to attend and take the depositions in the bearings case.

And there's also two project managers --

THE COURT: I wanted to ask, what is a project manager, what are the backgrounds of the project managers?

MR. SHOTZBARGER: Your Honor, the project managers work in our information support group. They are essentially IT, which is crucial in a case like this where you've got document databases full of millions and millions of pages. They are very helpful in receiving documents that come in from the named plaintiffs, processing so that we can ourselves as attorneys can sit at our desks and review at our computer. They know the language of the type of e-mail files

and all the types of files. They facilitate the transfers of the documents and they also deal with the vendor that we've engaged to host all of the millions of documents that we've gotten from the defendants, and so they are extremely crucial to our team as well.

And I think these two project managers for this round of settlements, the total was only 7.7 hours. A lot of that work was done in the beginning of the case loading the documents and collecting documents from our clients, but in sum these are, you know, IT folks who are a lot more versed in the technologies than the attorneys.

And as I said, this is the -- this will be the -- would be the second award of attorney fees in the bearings case for the truck and equipment dealers. Our previous motion covered from the inception of the case in 2014 through December 31, 2016, and now we are talking about the period of January 1 of this year through the end of July of this year, which I said was very active. We've been litigating this on a contingency fee basis with no guarantee of any recovery of fees. In this motion we are seeking fees equal to one-third of the total net settlement amount for this final round of settlements.

One-third would equal $1,479,000. We calculated that amount by taking the net settlement amount, not the total settlement amount but the net settlement amount, minus

notice and claims administration costs, minus escrow agent costs. And this fee, when we are looking at the bearings case as a whole, would represent 85 percent of the lodestar.

The net payments to the parties for this round of settlements would be approximately $2.73 million out of the 4.745 net total settlement amount, and that's calculated after backing out the litigation expenses which Duane Morris has forwarded.

The lodestar includes attorney hours for attorneys from Duane Morris, and, like we just discussed, it also includes those two paralegals and two project managers. Total for Duane Morris employees and attorneys, 1,938 hours, that's all calculated after January 1, 2017. For the case in total, we are up to 7,604 total hours in the bearings case since 2014 when we were first getting ready to file the complaint.

I just want to note that these totals do not include hours spent after July 31st, that would be hours spent preparing these motion papers as well as dealing with a lot of settlement administrative issues with the defendants as well as with RG2, the claims administrator.

The hours and the amounts are set forth in my declaration attached to this motion for attorney fees and reimbursement of litigation expenses, I'm talking about Exhibit 1-B and 1-C to my declaration.

I think one factor that's important to note here is that the Department of Justice investigations as well as the Japanese Fair Trade Commission investigations, as far as we know and are publicly available, they were not focused on trucks and construction equipment and agricultural equipment. Those investigations and criminal cases were based on passenger cars largely focused on those vehicles as opposed to the claims that we have brought in the bearings case. And so needless to say, we had to do a lot of work to build the case and prosecute it through discovery, and I think that hard work is reflected in the figures that we have submitted to the Court.

As an example, just talking about from January 1, 2017 through about the end of March when we settled, completely settled, we had Duane Morris attorneys of which there's only -- we have a team of seven or eight attorneys, we attended 40 depositions, and these were mostly two-day depositions requiring a lot of travel. My colleague, Mr. Parks, and I were attending depositions in Seattle on a weekly basis to the effect where he would be in one conference room handling one deposition, I would be in the other conference room handling another deposition, and then we would get home on Saturday after the deposition and gear up to do it again the next week. While all of that was going on, the other members of our team were attending depositions

in San Francisco, Ann Arbor, New York, as well as other places and, where appropriate, attending depositions by phone.

It was certainly an active period this winter in the bearings case, and that is reflected in this motion for award of attorneys' fees and litigation expenses.

In our opinion, a 33 percent fee based on the percentage of the fund approach that we set forth in our motion, this fee would be well within the range of reasonableness, approved by -- awarded and approved by courts within the Sixth Circuit as well as this Court in the truck and equipment dealers prior settlements, and so we respectfully request that award as well as reimbursement of our litigation expenses.

Should the Court have any questions, I would be glad to answer them.

THE COURT: Where do you get the 33 and a third?

MR. SHOTZBARGER: Your Honor, that's a common -- it is common for plaintiffs' cases taking cases on a contingency fee. However, as set forth --

THE COURT: It is common in personal injury cases.

MR. SHOTZBARGER: It is common, but as our motion sets forth, it's common and well within reason of certain fees awarded in complex MDL antitrust cases as well. Our motion, I believe we cited cases where 35 percent under the

percentage of the fund approach was awarded. Even upwards to 40, 45 percent has been awarded in percentage of the fund approach cases in antitrust cases, not solely personal injury.

And this is the second case that we are handling. As Mr. Parks represented earlier, we are only in five cases. Wire harnesses is completely settled. Now bearings is completely settled. OSS there is just Takata remaining, so that case is on hold. And then we only have three more down the line, so this is the second case.

And I should also note that it is the first case that we filed. We filed bearings as our first case filed back in 2014, and then came wire harnesses, and then came the subsequent cases. But as I stated, we believe that 33 percent is certainly reasonable here, the reason being that when you look at bearings as a whole doing the lodestar crosscheck, it is only 85 percent of our time spent on the file, and so because it comes in under a one multiplier under the percentage of fund approach, and even with the lodestar crosscheck, we believe 33 percent is certainly reasonable.

THE COURT: Thank you. The Court has reviewed the expenses and you have answered my questions on some of these, and I will order the reimbursement to you of all of the expenses that you have incurred as noted in your papers.

From the balance, the question is how much of an

attorney fee is appropriate, and as you may or may not know, the Court has struggled with this in other cases. In the other cases, I think at this point we have set 20 percent as the floor with the -- certainly with the knowledge that more may be sought and received in the future.

In looking at yours, which are very few parts, the Court in the first round because of this awarded you your -- I believe your request was 33 and a third in the first round and you did receive that. I have looked at the hours here as you stated, and I'm not going to repeat those hours. I do know that crosschecking them with the lodestar, it's a percentage of less than one. I think it's the -- the actual lodestar, the actual lodestar for the bearings based on 7,604 hours is 85.6 percent of the settlement. Thus, as I have indicated, that multiplier is less than one and that's usually a good crosscheck.

I would further note that it is my experience only from discussions with other judges that many of them do hire accountants, et cetera to look at the hours that the attorneys are putting in. I'm not doing that, I don't believe in that. I hire you because I believe you are honest and I assume you are putting in the actual hours.

Now, do I think extra hours are added in because just mathematically they get in there by rounding off, et cetera? Absolutely. But I'm much more for the percentage

of the fund approach as you indicated, and I like to look at the crosscheck but I give it very little weight. The -- you certainly deserve what you earn. You have worked hard as you said in this particular case. The DOJ did not offer you much support, so to speak, and you had to do it on your own.

But I don't know what the magic number; that's why I asked you why a 33 and a third. Well, yes, it's given, maybe more is given sometime, less is given a lot of times, I don't know, but I'm looking for a number, and I think looking at what is common in these cases and what is common in really a lot of litigation in other cases where attorneys take these -- take a case on a contingency fee basis, I think from 25 to 35 is a pretty -- percentage is a pretty common one from what I've studied. So I'm going to grant you 30 percent of the attorney fee, for the attorney fee in this matter. Okay.

All right. Anything else.

MR. SHOTZBARGER: That's it, Judge Battani. I appreciate it. Thank you.

THE COURT: Thank you. All right.

Now we have the air-conditioning system motion, right? We have the defendants' joint motion to dismiss the state law claims.

MR. DUKE: Yes. My name is Brandon Duke, and I will be addressing that first motion for defendants.

THE COURT: Okay. All right.

MR. DUKE: Defendants filed a -- or are moving to dismiss on two discrete state law claims with respect to two discrete issues. First, with respect to ADPs, their claim under South Carolina's antitrust law, and then second, plaintiffs' -- both plaintiffs' unjust enrichment claims under Florida law.

And our motion is different than previous motions for two distinct reasons. For the South Dakota claim, unlike prior actions, ADPs here failed to allege that a specific ADP either purchased or resided in South Dakota. And for the Florida claims, since this Court last addressed this issue, the Florida Supreme Court has made clear that in order for a claim to prevail under unjust enrichment, it has to -- the benefit has to be conferred directly to defendants.

THE COURT: What has to be conferred directly to defendants, the --

MR. DUKE: The benefit, the benefit.

So with respect to the South Dakota claim, ADP's claim fails for two reasons based off of this Court's prior holdings. There is no named ADP -- no named ADP is alleged to reside in South Dakota nor is a named ADP alleged to have made any purchases in South Dakota. This is different than any of the prior ADP cases and is perfectly in line with the Court's decision in the LTD wire harness case where the Court

rejected a similar claim under South Dakota law for failure to have either one of these allegations.

Instead, with South Dakota, ADPs only include boilerplate conclusory allegations, which this Court has explained that such allegations are insufficient to state a claim under the South Dakota statute, and the South Dakota statute specifically requires an interstate nexus between the defendants and -- the defendants' conduct and interstate commerce -- I'm sorry, intrastate commerce, and unless ADPs are able to plead such in-state purchases, they have not shown that required interstate nexus.

Lastly, despite previously agreeing that the intrastate nexus is a requirement under South Dakota law, plaintiffs now attempt to minimize that standard in the cases they cite. However, those cases that they address in their opposition relate to antitrust injury cases as opposed to here which is focused on the elements of a South Dakota claim.

With respect to the Florida unjust enrichment claims, in January the state --

THE COURT: Isn't the TED -- if we can just stick to the South Dakota for a minute.

MR. DUKE: Sure.

THE COURT: The truck and equipment dealers is the only one that I ruled the other way on.

MR. DUKE: That's correct, but you used the same reasoning in at least three or four prior case involving ADPs where they agreed that the intrastate nexus was a requirement, and you found that in those cases ADPs either alleged instate purchases or they alleged that they resided in the state and meeting the standard that you set which was the same standard that you applied later in the TED case.

THE COURT: Well, the effect was in the state here, right? People paid more in South Dakota for their vehicles allegedly.

MR. DUKE: Well, they have included a single boilerplate allegation that there was -- and I want to be accurate in -- that there was price competition was restrained and that prices were raised in South Dakota, but they haven't provided any specific allegations which in the TED decision the Court explained was necessary to meet this intrastate nexus requirement, that you have to claim specific allegations as opposed to general boilerplate claims.

THE COURT: All right. As I recall in the TEDs, they also didn't raise any of these cases that were cited here.

MR. DUKE: That may be correct. I'm not going to admit to going through every single one of the briefs, but this issue has also been before the Court in cases involving ADPs where they too agreed that the intrastate nexus

requirement was relevant for South Dakota and didn't object to the Court's approach in those cases either, so this is the first time that they have raised this issue with respect to South Dakota.

THE COURT: Okay. How about the Florida Supreme Court decision?

MR. DUKE: So in -- so with respect to the Florida Supreme Court in the Kopel decision in January, the court made seemingly clear that in order for a plaintiff to prevail on an unjust enrichment claim, the benefit has to be directly conferred to defendants. The facts there are -- the facts from Kopel are -- with respect to the benefit are directly applicable here.

And subsequent to that decision, the Eleventh Circuit in Johnson v. Catamaran Health Solutions has followed Kopel to confirm that indirect benefit -- an indirect benefit is not sufficient to establish an unjust enrichment claim.

Now, the plaintiffs in their briefs cited a number of cases from the Florida district courts that don't address Kopel, either predate Kopel or slightly after, and just don't address this issue. But the two controlling courts, either the Eleventh Circuit for the federal courts in that district or, more importantly, the state's highest court, which is, as you know, the controlling -- is the controlling court for the Florida state law, has made clear that the benefit must be

directly conferred, and there is no mitigation -- mitigating that in the court's ruling.

THE COURT: Yes. Okay.

MR. DUKE: Thank you.

THE COURT: Thank you very much. Plaintiff.

MS. LI: Good morning, Your Honor. Evelyn Li, Cuneo, Gilbert and LaDuca, representing automobile dealership plaintiffs.

I would like to address the South Dakota antitrust law issue. In all previous decisions by Your Honor in the automobile dealership action, our South Dakota antitrust claim was allowed to proceed. It was --

THE COURT: That's what I thought, except for that TED decision.

MS. LI: I'm saying in our action, in automobile dealership action, you allowed us to proceed with our South Dakota antitrust claim, and it was allowed to proceed whenever the defendants moved to dismiss based on the theory that our allegation does not meet the interstate commerce requirement under South Dakota law.

Now, the defendants bring back the same issue again which Your Honor has already considered and determined numerous times. We therefore see no reason to deviate from the previous rulings, and we believe we have properly alleged a claim under South Dakota antitrust law.

And defendants emphasize in their motion that ADPs do not specifically point to a named plaintiff who resides in South Dakota or made purchases in South Dakota, but that is not the issue. The issue is not whether we allege a named plaintiff who resided or purchased in South Dakota. The issue is whether the South Dakota antitrust law requires that allegation, and the statute of South Dakota antitrust law does not have that requirement. The statute simply states a contract, combination or conspiracy between two or more persons in restraint of trade or commerce, any part of which is within this state, is unlawful. And what we have alleged in our complaint meets the statutory requirement.

For example, in paragraph 253 we allege defendants have entered into an unlawful agreement in restraint of trade, the effects of which were that A/C system price competition was restrained, suppressed and eliminated throughout South Dakota, and also A/C system prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Dakota. This allegation demonstrate that defendants' conspiracy raised prices in South Dakota.

We additionally alleged members of the damage class who resided in South Dakota and/or purchased A/C systems or vehicles in South Dakota were deprived of free and open competition in South Dakota, and also members of the damage

class who resided in South Dakota and/or purchased air-conditioning systems or vehicles in South Dakota paid super-competitive, artificially inflated prices for A/C systems and vehicles containing A/C systems in South Dakota. These specific allegations made clear that A/C systems and vehicles are sold in South Dakota.

So contrary to what the defendant counsel just said, our allegations were not conclusory; they were very specific and they demonstrate there was an effect in South Dakota because of the conspiracy. The prices were raised.

The statutory language says nothing about that only South Dakota residents have the ability to pursue an antitrust claim under South Dakota law. Instead, it simply says any part of a conspiracy contract, or combination in restraint of trade or commerce that is within South Dakota is unlawful.

The defendant cannot point to any part of that statutory language to impose a residency requirement upon us or an instant purchase requirement upon us. They cannot point to any part of that statutory language that imposes such a specific requirement, and, in fact, they do not make that argument.

The theory that they are trying to advance here is just like what they have done in the OSS case where they moved to dismiss our South Dakota antitrust claim, and they

told Your Honor that the South Dakota law requires a specific allegation that we -- that we have to put in in our complaint that the defendants sold OSS in South Dakota, and Your Honor considered and rejected that argument. Your Honor ruled that, I quote here, plaintiffs' allegations likewise satisfies South Dakota's antitrust statute. The law does not require that defendants sell the price-fixed product themselves in South Dakota, and these allegations satisfy the pleadings standard.

Failing to convince Your Honor in OSS that they can randomly insert a specific requirement into the statutory language, they now come back, rephrase that argument under the same theory and say that we need to specifically allege the instate residency or instate purchase in South Dakota in order to plead an antitrust claim under the same statute, of course Your Honor should again reject that argument because we have demonstrated that the defendants participated in a nationwide conspiracy that raised prices in South Dakota and that irrelevant products were sold in South Dakota and these allegations satisfy the statute.

And regarding the authorities that we cited to, they say in their brief that all of the authorities we cited to were inapplicable, but that's not true. All of the authorities we cited there support our interpretation of the statute. For example, in the In re Processed Egg case --

THE COURT REPORTER: I'm sorry, the case name?

MS. LI: In re Processed Egg case that we cited in our brief.

THE COURT: I still didn't get it. In re Processed Egg --

MS. LI: Egg Product antitrust litigation. Sorry.

THE COURT: Okay.

MS. LI: That court looked at the language of the South Dakota statute and held South Dakota antitrust law does not contain statutory language that explicitly requires an interstate -- intrastate injury.

The Court also stated that as to South Dakota statute and several other similarly worded state statutes, that on their faces the four state statutory provisions can plainly be construed to not require instate residency or an instate purchase but rather only that some of the defendants' conduct occurred or that the effects of which were felt within the state. This shows that our allegation is sufficient.

Also in the In re Chocolate Confectionary antitrust litigation, the Court held a plaintiff must allege only that defendant's conduct produced anticompetitive effects within South Dakota, and the Court found that plaintiffs state a claim under South Dakota law by alleging a nationwide conspiracy that produced increased prices in South Dakota,

and that's -- that is what we have alleged in our complaint.

And we also cited to the In re Intel Corp. Microprocessor antitrust litigation case which held the same. And also in the In re New Motor Vehicles antitrust litigation, the Court similarly held that it is logical to assume that the state intended its antitrust coverage to be as broad as possible. Therefore, the Court held that the plaintiff need only allege that a part of the trade or commerce occurred within South Dakota and that the sales of motor vehicles in South Dakota satisfy that requirement.

THE COURT: Okay. Let's talk about Florida and Kopel.

MS. LI: Sure. So for Florida, Your Honor has previously held that there is no requirement that the benefit be bestowed upon defendants through direct contact. Your Honor further explained that, even though the indirect purchaser plaintiffs did not have a direct relationship with the defendants, they do allege they conferred a benefit on the defendants, and this was in Your Honor's fuel senders --

THE COURT: But that was before Kopel, and now we have Kopel and Kopel seems to say it has to be a direct benefit.

MS. LI: Correct. So the single argument that the defendants rely on is Kopel, and what the Kopel says -- the Florida -- the Florida Supreme Court in Kopel in one sentence

affirmed that the lower court was correct in citing to a 1996 case for the ruling on an unjust enrichment claim, and after that -- after that one sentence, there is no discussion or analysis whatsoever about the facts of the case or the application of the law of the case whatsoever. The court just says the lower court was correct in citing to a 1996 case in ruling on the unjust enrichment claim, that's it.

So our view here is Kopel does not change Your Honor's ruling, Your Honor -- all the previous rulings by Your Honor on the issue. The issue is not that whether there is a direct benefit being conferred upon the defendants. The issue is whether we need to have a direct contact with the defendants, whether the Florida law requires us to plead a direct contact with the defendants in order to proceed with our unjust enrichment claim under that state law. And we don't believe that Kopel changes that ruling where Your Honor has stated before there is no requirement under Florida law for us to have a direct contact with the defendants to plead such claim.

We understand even if -- even if Kopel stated that there has to be a direct benefit conferred upon the defendants, we understand that direct benefit to be a non-incidental benefit. And what that means, we cited to the Processed Egg case again to explain what is an incidental case. The egg case said payment where services performed by

the plaintiff for his own advantage and from which the defendants' benefit incidentally is not recoverable. So incidental benefit is not direct benefit, therefore is not recoverable.

In our case the defendants realized their profit from the sale of their products to the indirect purchaser plaintiffs. They intended and they knew that we would purchase those parts and cars, and therefore that profit is not incidental. And, of course, we didn't overpay for those cars and vehicles for our own benefit, so it cannot be argued that the benefit the defendants realized from these sales are incidental.

Also the Eleventh Circuit has defined incidental as occurring merely by chance or without intention or calculation, or met or encountered casually or by accident. A Florida state court also said incidental is something that happened by accident or chance.

In our case, again, defendants sold A/C systems with the intention that the plaintiffs would purchase them and the defendants would benefit from the overpayment that would be borne by the plaintiffs. So even if it is the case that there is a requirement for direct benefit, we believe we have pleaded a direct benefit that was conferred upon the defendants that is a non-incidental benefit.

In support of our position, we also cited to

authorities here in our brief and also in the past response to the same argument. We also -- we even cited to the cases that were decided after Kopel. They -- there was the case Melton v. Century Arms, Inc. In that case the defendants argue, like the defendants here, there is no direct benefit because no named plaintiffs purchased a rifle directly from the defendants. And the court in that case responded -- rejected the argument and said defendant's argument is contrary to Florida law which provides that no direct contact is required for a direct benefit to be conferred, so this supports our argument and position here.

And also we have another case, the State Farm v. Brown case. That case similarly rejected an argument that was similar to what the defendants argued here. The court stated PPMS argues that the unjust enrichment claim fails because State Farm has not alleged that it paid any money to PPMS.

This argument is unpersuasive. When defendants act in concert to unjustly obtain benefits, each can be held to have been unjustly enriched by virtue of the benefit derived from the scheme even if the benefit was not conferred on them directly. Florida federal courts and others across the country have consistently rejected the same argument that they make here, and we have provided those authorities in our briefs so I won't repeat them.

And another important point that we want to stress here is that it would not be -- it would not serve the principle of justice and equity to agree with the defendants here because it would simply preclude an unjust enrichment claim merely because the benefit passed through an intermediary before being conferred on the defendant, and this was the holding by a Southern District Florida court in the General Motors case that we cite in our brief.

THE COURT: And was that before or after?

MS. LI: This was a 2014 case so before.

Defendant also argued that our authorities are not controlling because they didn't cite to Kopel, but as I just point out, that misses the point. We believe Kopel does not speak to the issue here. The issue is whether the law requires a direct contact between us and a defendant in order to plead unjust enrichment claim under Florida law, and Kopel did not speak to that issue, and that's why the authorities we cited did not cite to Kopel.

THE COURT: Okay.

MS. LI: And also the last point I want to make for Florida here is they could not point to any Florida Supreme Court opinion that speak to this issue about the direct contact that I just described. So that means there is no -- there is no reason that Your Honor's ruling should change because there is no Supreme Court opinion -- Florida Supreme

Court that would overturn all the good authorities that we cited before and here on the very issue.

THE COURT: All right.

MS. LI: There was just one point that I missed to mention for this South Dakota antitrust claim, and since the defendants' counsel raised it, I want to address it, the truck dealers' opinion. I think Your Honor has slightly mentioned, and it is true that Your Honor has ruled differently in the truck dealers case, but that's a different case, that's not the auto dealers' case. And also another important point is they didn't cite to, and Your Honor pointed out in your opinion on page 7 for the truck dealers' case, that they did not provide Your Honor with anything, with any authority that would support their position that residency or in-state purchase is not required, they did not provide any authority for that position.

So we believe that ruling leaves open the possibility that it can change in the circumstances when appropriate authority and arguments are presented, which is what we have done here, and we have cited to the Eggs case, the Chocolate case, the Motor Vehicles case, the Intel Corp. Case, the LCD case that Your Honor could look at in our brief.

THE COURT: Okay. Thank you.

MS. LI: Thanks.

THE COURT: Reply?

MR. DUKE: I -- just couple of quick points.

With respect to South Dakota, the intrastate commerce requirement is not something that defendants randomly pulled up out of -- and isn't a new issue with respect to ADPs. As I mentioned before, it has been an issue in other motions to dismiss. And, again, reading from this Court's ruling in bearings, which involved ADPs, certain jurisdictions, including South Dakota, require a plaintiff to allege a nexus between a defendant's conduct and intrastate commerce; boilerplate allegations are insufficient. What the Court has explained is sufficient is the two requirements that we discussed.

And then with respect to Florida, defendants sell products to OEMs and their suppliers and receive a benefit from those parties. We do not have -- we do not receive any benefits from ADP or EPPs. That's where the line is drawn in Kopel and in the Eleventh Circuit cases and in the cases they just mentioned.

Specifically State Farm is one they relied on in their brief, and in that case one defendant received a -- a single defendant received a direct benefit whereas the others were indirect. Whereas here, no defendants received any direct benefit at all from plaintiffs or do they get any direct benefits before the products are resold to their

indirects.

So we think that the controlling law from Florida should guide the Court to reevaluate this issue, and also the Eleventh Circuit case has shown that the subsequent working decisions from the Florida District Court haven't properly incorporated Kopel into Florida law and unjust enrichment.

THE COURT: Thank you.

MR. DUKE: Thank you.

THE COURT: All right. The Court will issue an opinion on this.

I would like to next go to the judicial notice since it's argued --

MR. KESSLER: Your Honor, I think there is one more motion pending for Panasonic in this --

THE COURT: Yeah. I'm talking about the Panasonic judicial notice motion because you reference it in your other motion.

MR. KESSLER: Thank you. Sorry.

THE COURT: So it is out of order here.

MR. KESSLER: Sorry.

THE COURT: Who is --

MR. KESSLER: I am, Your Honor. Jeffery Kessler, Your Honor, from Winston & Strawn appearing for Panasonic Corporation.

Good morning.

THE COURT: Good morning -- good afternoon.

MR. KESSLER: On the issue of judicial notice, so plaintiffs made certain allegations about a trade association which they identified as the Nichireiko meetings without explaining what they were. And it turned out that when you go website of the Japan Refrigeration Air Conditioning Industry Association, it becomes very clear that the Nichireiko meetings they are referring to was not some type of like clandestine, secret, suspicious sounding meeting because they used a Japanese word that was really an acronym that translated to the Japan Refrigeration Air Conditioning Industry Association. So these were normal, publicly promoted trade association meetings which goes to our argument about what significance you should draw from them.

So we believe you have the ability to take judicial notice of that because it cannot reasonably be contested that, in fact, that's what this association is, these Nichireiko meetings. I don't think they've actually contested that, but they -- you know, it is really undisputed, and that's exactly the type of situation where courts do take judicial notice of that type of a thing so that you could understand the allegation.

THE COURT: I'm not sure what I'm taking judicial notice of.

MR. KESSLER: Oh, just the attached website

information we provided --

THE COURT: I have read that.

MR. KESSLER: -- and --

THE COURT: But what, is it the fact that this association has this name Nichireiko.

MR. KESSLER: Two things. One, that this is the Nichireiko meeting, and, number two, that this is a publicized open trade association which we think is going to be significant, and we'll talk about what inferences under the case law you should draw about the fact that they reference two meetings from this group, that's all.

THE COURT: Okay. Let me go over that. Then it's a publicized trade association.

MR. KESSLER: Correct.

THE COURT: And that there was a meeting or Nichireiko means meeting?

MR. KESSLER: Nichireiko is a Japanese abbreviation of Japanese words that translate into Japan Refrigeration Air Conditioning Industry Association. It is simply -- it is simply a Japanese term that --

THE COURT: For these --

MR. KESSLER: -- is referred to for this association which in English is described this way.

THE COURT: Okay. So if we say Nichireiko, we could just as easily substitute Japan Air Conditioning

Meeting Association, same thing?

MR. KESSLER: That's correct.

THE COURT: One is in Japanese, one is in English?

MR. KESSLER: That's correct.

THE COURT: Okay. Okay. The thing I note is that this website is 2017 and the allegations here occurred in 2009 or something. How do we know this was true back then?

MR. KESSLER: Again, if you look at the website this association has existed for many, many years in Japan predating 2009. So, again, I don't think there is any dispute that this is the association. It is not that some other association existed then and a different one now. And, again, I don't think there is any dispute about this. It is just more for Your Honor to be able to interpret from this public information what their allegation is referring to, that's all.

THE COURT: Okay. Let me hear what they have to say.

MS. CALKINS: Good afternoon Your Honor. Lindsey Calkins, of Susman Godfrey, on behalf of the end payor plaintiffs.

THE COURT: Do you agree, Ms. Calkin, that -- is it Calkin or Calkins?

MS. CALKINS: Calkins with an S.

THE COURT: Spell it for me.

MS. CALKINS: C-A-L-K-I-N-S.

THE COURT: Okay. Ms. Calkins, do you dispute that Nichireiko is another name for Japan Air Conditioning Meeting Association or something?

MS. CALKINS: I dispute that the websites that Panasonic has put forward are an appropriate place to get that information.

THE COURT: Okay. But that wasn't my question. Do you dispute that interchangeability, that this is an English -- Japan Air Conditioning Meeting Association is a translation for Nichireiko?

MS. CALKINS: I'm not in a position to dispute a certified translation that would translate Nichireiko that way.

THE COURT: Okay.

MS. CALKINS: So the answer is no. But going to the question of whether or not we can actually take the information from the websites for what it means, I think that the answer is no. It is interesting that counsel said that the information from those websites was precisely the type of information that courts typically take judicial notice of but then cited no case law. And Your Honor saw in our briefing that we cited several cases where courts have said, look, information coming from private websites is not reliable and its accuracy cannot be ascertained. This information is not

coming from a government website or another source that a court would typically take judicial notice of.

I would refer you to the Dingle vs. BioPort Corp. Case that we cited, as well as Ruiz vs. Gap. Those cases both clearly laid out the reasoning for why courts shouldn't take judicial notice of information from websites like these.

A second reason, even if we do take the information from the websites as accurate, that the Court should reject Panasonic's offer is that the website lists Panasonic as a regular member of this industry association. So how do we know that Panasonic didn't design some of the information on the website? How do we know they weren't responsible for it? Again, we cited case law in our briefs that shows that courts should be especially skeptical of information that might have been put on websites by a party to the case.

There is an independent reason beside the case law that the Court should reject Panasonic's request, and that is that the information is completely irrelevant. As Your Honor already noted, the websites they submitted were pulled this year and the Nichireiko meetings that we are concerned with took place in 2007 and 2009. In Panasonic's reply brief they submitted some earlier archived versions of that website, but I would submit those are also irrelevant and their verification just cannot be -- cannot be confirmed.

This will go to Panasonic's principal motion, but

the information on the website is also irrelevant because it doesn't help Panasonic at all with any claim or defense in the case. Plaintiffs are not alleging that the simple attendance at Nichireiko is evidence in and of itself of collusion. Plaintiffs have made independent allegations, number one, that Panasonic employees had conversations at those Nichireiko meetings about their negotiations with OEMs and also that there were separate bid rigging that occurred with Nissan. So, Your Honor, plaintiffs respectfully ask the Court to deny Panasonic's request.

THE COURT: Okay.

MR. KESSLER: Just very briefly, Your Honor. I don't understand the assertion that we have cited no authority for this. The two cases we cited, one from the Sixth Circuit, is City of Monroe, which is 387 Fed. 3d 468, 472, note one, that specifically took judicial notice of an -- in that case a National Association Security Dealers website, to get information from that website.

And the second one in this District Court is Liberty Mutual Insurance Company vs. Consolidated Evidence, which is also cited in our brief, that's a 2007 Eastern District of Michigan case. And what the case law makes clear, the ones we cite and they cite, is that websites today are, if it is facts which are not reasonably disputed, is a perfect source for the judge to take judicial notice of. The

cases they cite were trajected is because the facts cited on the websites were, in fact, in dispute. But you asked counsel directly whether these are in dispute and she had no basis to dispute them, and I would submit you couldn't because all we did was provide a certified translation of what the term meant, and I will get to the significance of this for the motion because that I think is our next argument, not this argument, but certainly it is the type of thing that courts in this district and the Sixth Circuit take notice of.

Finally, Your Honor, I would just note with respect to this subject that we did put in when they raised this the archived versions that go back to 2007 and they are the same, the same points. So there is no dispute that the fact that we used a current version originally was an issue when we attached that as exhibits I think it is A and B to our reply brief which made it clear that there is no dispute that, in fact, this is the accurate information.

Thank you, Your Honor, unless you have any questions about the judicial notice.

THE COURT: I do because I'm still grappling with this. From this website it appears that this Nichireiko does mean Japan Refrigeration Air Conditioning Industry Association?

MR. KESSLER: Correct, and that's the only thing --

THE COURT: Is that what you want to get out of this?

MR. KESSLER: That's number one. And number two is that this is a publicly advertised trade association which states a whole variety of normal trade association purposes which is going to trigger certain case law authority I'm going to discuss when we get to the main argument.

THE COURT: But are you asking this Court to take notice that there is a lecture meeting in July 2016, that there was a meeting then?

MR. KESSLER: No, no, that's their allegation. So I'm not asking you to take notice of what meetings there were. What I'm simply asking you to do is they made an allegation that we are going to get to that there were two meetings of the Nichireiko group that Panasonic attended, and I'm going to get to that. And in order for me to argue that the case law applicable to how the Court should interpret allegation about trade associations, normal trade associations apply, I need you to take judicial notice that what they are referring to is a publicly known, legitimate trade association, and then we'll get to the content of what they allege, which is really --

THE COURT: Why do I need to take judicial notice of that? I mean, if you say it in your argument, what -- I don't understand.

MR. KESSLER: Well, because their allegation, if you read it, reads like these are clandestine, secret meetings of conspirators using a nefarious code name of Nichireiko for which if that were the case, I couldn't argue you should interpret this under the trade association law, so I need you to get to the -- because they omitted --

THE COURT: Why couldn't you argue it? Why couldn't you say my defense is this is a --

MR. KESSLER: Well, I can, but I think I have to go with their factual -- see, I'm limited by their allegations, so they omitted from their allegations what this -- what these meetings were. If Your Honor says that you don't need to take notice and you are just going to apply the trade association law, I'm totally content, but I anticipated an argument from them saying we didn't claim it was a trade association meeting, we claimed it was a secret Nichireiko meeting so Your Honor should assume bad things happened there, you can't argue it is a trade association. So the whole purpose of the judicial notice was just to negate that argument from them, which they could say you are locked into their pleadings, not what I tell you it really is. So that's the only purpose for this. Your Honor could decide in the next argument whether you need the judicial notice or not. I think that is probably the best way to treat this.

THE COURT: I think you are right.

MR. KESSLER: Okay.

THE COURT: I think you are right. I think, however, that the argument you raise -- I'm not taking judicial notice of this website because there's a lot on this website that I don't know, may be fake news, I don't know what comes from Japan, but I can't do that. I don't believe the judicial notice rules would allow this Court to take judicial notice of something like this. But having looked at it and having your statement that this is an industry association, I am accepting that for this purpose, and if they want to later defeat that, that's fine.

MR. KESSLER: Okay.

THE COURT: I think right now all we need -- from what I understand, all we need is to say that this Nichireiko is a Japan Refrigeration and Air Conditioning Association, and I will accept your word on that based on what is on this website to support it, and that you submitted that to them and they did not submit anything in response to say no, it is not an association.

Now, could they use this word to say it also means something else? They can. I don't know. And I don't know that they have put anywhere that it was a clandestine association, so we will hear what the argument is.

MR. KESSLER: We will see what their response is. Should I move to the main argument now, Your Honor?

THE COURT: Yes, please.

MR. KESSLER: So, Your Honor, I believe the issue we are presenting here is virtually the identical issue that you ruled upon on April 13th of 2016 when you rejected the motion to consolidate and amend the complaints in 18 different individual parts conspiracies by the indirect plaintiffs who allege that they were all connected together by, you will remember, by in part Denso who was in these different parts, and also I -- I think it was also by -- maybe by Mitsubishi as well. They had different connections, and they tried to change the 18 individual cases to be one overarching conspiracy, says -- and they said therefore it all should be together.

Your Honor's analysis of that issue is squarely applicable here and I'm -- so I'm looking at Your Honor's opinion and I really could not have said this better in terms of how parallel this is. So, first of all, in that case they try to use the word automotive parts and defined it to be all of these 18 different parts, and then they put it in an allegation that said defendants each sold an automotive part, but, of course, that could be any one of the 18 parts would qualify. And what Your Honor pointed out is that couldn't substitute for the fact that there was some connection between all of these parts in the conspiracy.

And I'm now reading from Your Honor's opinion.

What you say is in contrast to IPP's characterization of the conduct, defendants focus on the 28 different defendants and co-conspirator families named in the CACs and the different component parts made by these defendants. Defendants contend that IPPs merely replaced the names of specific component parts with the more global term automotive parts in their proposed CACs. The use of the term auto parts market is an attempt to suggest that the auto parts are interchangeable when they are not.

You then say the question this Court must resolve is whether the factual allegations in the CACs satisfy plaintiffs' pleading burden to allege the existence of a single conspiracy rather than multiple conspiracies.

And you then went on and you looked at the fact that all the specific allegations were for different defendants at different time periods involving different products without any allegation thread to weave this together into a single conspiracy. And you point out, for example, there are no allegations in the CAC of deals between makers of different component parts, people -- I made one, you made a different one, and no inference arises of knowledge outside of each defendant's own specific deals. There are no allegations that the defendants competed for the sales of all of the 18 parts. There are no allegations to support that each defendant knew of other defendants' conduct for other

products. The CACs merely advance allegations of separate conspiratorial conduct between different defendants making different parts.

I submit when you look at this complaint, and I'm now applying it to Panasonic in particular, I will get to, okay, that's exactly what this is. They took more than ten different parts that could go into an A/C system, and in paragraph 3 of their complaint, in both of them, they define A/C system to be either the whole system, which makes sense I would say, or any of these other more than ten different parts.

Then they have an allegation in paragraph 4 that says each defendant sold an A/C system, but that was a trick because -- it's a word trick. It doesn't mean that plaintiffs -- that defendants sold an A/C system because my client doesn't sell any A/C systems and neither do any of the others, but we sold one part that could go into an A/C system.

And then when you look at the allegations of the complaint beyond that, so they are each like the allegations against Panasonic. So there is one allegation paragraph that is specific to Panasonic in this whole gigantic complaint and that's paragraph 188 in the end payor action, and it is identical in the actions involving the others as well, so they just copied in both complaints.

So what is the allegation that they make? The allegation is that Panasonic entered into one alleged agreement with one other company, Denso, in one year, 2007, for one RFQ involving Nissan for the Fuga Hybrid, a single model, end of discussion. That's the entire allegation for Panasonic.

Then when you look at the allegations for everyone else, they have no connection to Panasonic. They allege this one engaged in a discussion with this other company related to a different time period involving a different part that Panasonic doesn't make, is not alleged to make, involving a different customer, and this repeats itself throughout the complaint, just what was presented to you in the case where they tried to put the 18 different conspiracies together, so you can't get anywhere.

And the problem with allowing this, Your Honor, is that it takes what are 10 or 11 different cases -- I'm not asking you to dismiss with prejudice. If they want to allege a claim against Panasonic regarding this one agreement, alleged agreement with Denso involving the one component that Panasonic made, maybe they can state a claim for that and we will file a motion to dismiss.

But the point Your Honor made, if you mush this all together, you put impossible discovery burdens. Think about this. So Panasonic has to be in a case now where it has to

attend and defend depositions about all of these parts that it doesn't make, all of these meetings that it didn't went to and knows nothing about, all of these things that it is not connected to.

And how do we ever settle this case? Because we have got one allegation of one thing and they are saying no, you are in the conspiracy involving all of these businesses that you know nothing about. There's no allegation we ever met with these other companies, we ever discussed these other parts, that we ever knew about them. So you can't do that.

Now, the one last thing they cite, and I'm back to my judicial notice thing, and they go, ah-ha, we have the Nichireiko meetings. So the only glue -- that's why I had to file my motion I thought but now I don't think I do. The only glue they tried to say would tie people together, they say, and this is in paragraphs 188 to 190 of this and you can read what they are, they say in 2007 and 2009 -- by the way, not the whole period of this alleged conspiracy, they just pick these two years -- there were group meetings between several air conditioning system suppliers, okay, and these meetings were referred it as the Nichireiko. Okay. Generally the meetings would be held over dinner or golf and the host, all of which were rotated, would choose the location. That's one allegation.

Then they have two other allegations about this,

only two.

THE COURT: So say that they attended those meetings, just going back to your other motion, and they said these meetings were referred to as the Nichireiko.

MR. KESSLER: Right, they say two other things.

THE COURT: They were Japanese trade meetings?

MR. KESSLER: Yes, that's correct. And so you then have to look -- they go but we allege a lot more. So what do they allege? Well, the first thing, and this is important, in paragraph 190 what they allege is simply that a meeting took place hosted by Calsonic and Panasonic attended, end of allegation. They allege who attended, the other people too. I could read it. They allege Denso, Sanden, Valeo, Mitsubishi, Panasonic, they all attended. That's the allegation.

So what inference -- what value added can you draw that in a public trade association there was a meeting and Panasonic attended with no other allegation? The answer is, Your Honor, you could draw no adverse inference from that. The case law is overwhelming that when you are dealing with public normal trade associations for a lot of different meetings, which could have a million legitimate purposes, the mere fact there was such a meeting and Panasonic attended in that one year tells you nothing. That's why I had to establish it wasn't some secret meeting for which there would

be no explanation. The case law that we cited goes off of the fact of what kind of inferences you should and should not draw from trade association meetings. That's number one.

The other allegation which they could say we have a much better allegation -- and, by the way, you should read this allegation through the prism that they have cooperation we believe from Denso. I don't think they deny that. Denso settled with them. Denso is the source of most of these allegations here.

So they know exactly what they could allege about this meeting now. And here's what they allege, you know, their smoking gun allegation about the trade association meetings is as follows: During the meeting the representatives from Denso, Sanden, Valeo, Calsonic, and Panasonic discussed, among other things, the general air conditioning systems market. That tells you absolutely nothing. They were a trade association about the air conditioning systems market so they could have discussed, you know, that fact that, hey, you know, the demand is up, business is good, you know, they could have done a million legitimate things about the air conditioning system market. That tells you nothing.

And then they have one more allegation, and the status of their respective companies' negotiations with OEMs. So that's the one they are going to say, ah, there's my

allegation. At one meeting in 2007, in one year for this whole, you know, more than ten-year period of conspiracy, they allege they was a discussion of their respective companies' negotiations with OEM. It doesn't say price was discussed. They spoke to Denso. If price was discussed, you could be sure there was price. They didn't say there were any agreements discussed at the meeting. They didn't say there was any customer allocation discussed at the meeting. They say the status of their negotiations with OEMs. That could be anything. That could be a company simply saying you know what, I am going to be doing business with Toyota next year, that could be the status. That one discussion of one meeting could not possibly provide the glue for this global conspiracy claim.

So I would suggest, Your Honor, that if you reread your decision and what you said on 4/13/2016, this is a case where they should have to proceed, if they want to proceed against Panasonic, for what they actually can allege, which is going to be for the one part that Panasonic made, for the one agreement that, you know, that they had. In fact, if they want -- even if Your Honor required them to limit it to that product and discussions with Denso, it would dramatically take out this attempt to conglomerate together into one case what needs to be separate cases together going forward.

The last thing I will say, Your Honor, they are going to come up and say Your Honor has dealt with this before adversely. You have not. The cases they cite the other way are even the following. Even their cases where somebody came in, like in wire harness, and said my plea agreement only says X, you should be limited by the plea agreement. Your Honor has rejected that on numerous occasion.

We are not making that argument here. In fact, Panasonic has no plea agreement. The Department of Justice did not bring -- this is important too. They have plea agreements involving other parts and other companies that Panasonic doesn't make, doesn't make the parts in this complaint, other parts. There has been no action by the Department of Justice against Panasonic or anyone else regarding this part of this discussion regarding that. So I'm not arguing anything about limited to the plea agreements.

I'm also not making the argument that Your Honor has rejected that the mere fact that you don't sell a part means you can't be alleged to be part of a conspiracy involving that part. That's not my claim. Okay. That's something else Your Honor's looked at.

My claim is that there is no necessary, nonspeculative beyond boilerplate glue to tie together the

very, very specific separate allegations of what looked like individual agreements involving different parts into one overarching conspiracy claim and dragging Panasonic into a position where we are going to have to try to defend a case, 99 percent of which we were not in the business, know nothing about, are not alleged to have met with these people and frankly are not even in a position to defend what other people did.

Your Honor, that's my argument unless you have any questions.

THE COURT: You know, in wire harness it was defined as a bunch of other parts. How about air conditioning systems, isn't that what's happening here?

MR. KESSLER: No. So in wire harnesses there was lots of allegations in the plea agreements and others about multiple defendants getting together and discussing things, you know, that, you know, that apply to wire harnesses, and the claim was, well, I didn't make this specific component or not in the wire harness, but there were clear allegations against every one of those companies that would link them in to a claim of a single conspiracy, at least for purposes of a motion to dismiss, which is what Your Honor said. Okay.

Here, and you can compare wire harness to this, this is like the other case where when you look at the allegations, they are totally distinct. They involve

different parts, at different times, involving different defendants who don't overlap, who are not in the same businesses. Everyone in wire harnesses made some part of the wire harnesses thing; it wasn't that they were not wire harness companies.

So the point here is that we are companies that our businesses aren't even related to each other for most of these parts. There is no claim that we ever saw or knew of it. So, again, you could -- if you find the allegations like are in wire harness, then I guess I lose, but I believe when you compare the allegations to wire harness and to your case denying the consolidation amendment, you're going to find we are squarely on the other side of this in terms of their allegations here.

THE COURT: Okay. Thank you.

MR. KESSLER: Thank you.

THE COURT: Response?

MS. CALKINS: Your Honor, counsel mentioned in this case that he thought that the defendants were in businesses that were completely unrelated to one another. I'm having trouble squaring that with counsel's request that you take judicial notice of the fact that these people allegedly from different industries all attended a trade association meeting together.

In reference to the Court --

THE COURT: Trade association meeting of -- what was that other word for --

MS. CALKINS: The Nichireiko.

THE COURT: The Japanese Air Conditioning Meeting Association, that was the name --

MS. CALKINS: Correct, Japanese Refrigeration and Air Conditioning Industry Association I believe.

THE COURT: So presumably they all were involved in refrigeration or air conditioning?

MS. CALKINS: That's the allegation, Your Honor.

When it comes to the consolidation order, counsel suggests that you should look back at it, and I would agree because in that case Your Honor explained pretty clearly that those cases could not be consolidated because each separate case involved a different fact pattern, a different defendant, different automobile parts and different conspiracies. In this case we are only talking about the single conspiracy as to air conditioning systems.

This case is, in fact, much closer to the wire harness case, which counsel mentioned, when Denso attempted to argue that just because they manufactured one part of a wire harness, they couldn't be liable for a conspiracy as to the whole system, and in that case they manufactured electric control units and they did plead guilty as to that part. But this Court did not only hold that they were not bound solely

to that guilty plea, this Court held that they could still be part of the conspiracy as to the larger wire harness system.

This case is also similar to this Court's order on Mitsuba's motion to dismiss in the radiators case where they made the same argument that just because they made only a radiator fan, they couldn't be liable for conspiracy as to radiators as a whole. Your Honor rejected that argument and said that Mitsuba could be guilty because radiators were defined to include radiator fans. That's no different than here. A/C systems are defined to include compressors which Panasonic manufactured and fixed prices for.

In both the briefing and their argument Panasonic tried to gloss over the real specific allegations in the complaint. In 2007 the first allegation is that Nissan issued an RFQ to Denso and Panasonic for compressors to be installed in the hybrid vehicle. Panasonic at that time was the incumbent supplier. At Panasonic's request, employees of Panasonic and Denso met to discuss the RFQ at a hotel in Japan. During that meeting Denso agreed to bid higher than Panasonic so Panasonic would win the business. Denso and Panasonic agreed on a floor that the parties would not bid below, and when invited to bid lower, Denso respected the floor so Panasonic won the business.

THE COURT: Was the business for a compressor, period, or was it for an air conditioning system which

included a compressor?

MS. CALKINS: The bid was for a compressor that would form a part of an air conditioning system that would go in a hybrid vehicle.

THE COURT: But the manufacturer requested an air conditioning bid -- excuse me, a compressor bid solely, not combined with any other part?

MS. CALKINS: The exact contents of the RFQ is something that we would hope to learn through further discovery.

But, Your Honor, these are the type of very specific allegations that make -- that would plausibly suggest an agreement or conspiracy under Twombly, those combined with the fact that we know that employees from Panasonic along with other defendants who had pled guilty attended Nichireiko meetings in 2007 and 2009 and discussed the status of their respective negotiations with the OEMs.

THE COURT: Okay. Thank you.

MS. CALKINS: Thank you.

THE COURT: Reply?

MR. KESSLER: Very, very quick, Your Honor.

So I would state right now if Your Honor dismisses with prejudice and they file a new complaint alleging that that discussion in 2007 was an agreement with Denso regarding -- and, by the way, these are a specific type of

compressors called E compressors which go into hybrid vehicles, they don't go into air conditioning systems for other cars, and it was a specific -- and their allegation is it was an RFQ for compressors. Okay. So you have to go by their allegations now. It is not that it was an RFQ for air conditioning systems in which Panasonic sold the compressor.

THE COURT: Okay. You pled guilty -- Panasonic pled guilty --

MR. KESSLER: No, it did not, Your Honor. There has been no Panasonic plea involving this product at all anywhere.

THE COURT: Well, I'm going to ask you, I know that you pled and you paid 49 million to what product?

MR. KESSLER: Okay. That involved HID ballasts which are products that go -- they are a type of a headlight that go underneath the -- they are called high intensity, you know, ballasts that go into certain types of modern headlights. That was one case that was settled, there was a plea for that. There was also a plea involving switches and sensors, okay, solely for Toyota vehicles in an agreement with Tokai Rika. Those were the two pleas. Okay. There was no Department of Justice action against Panasonic at all or, frankly, you know, any government action anywhere in the world regarding this claim of this issue involving Denso in this discussion.

So, again, I'm not saying I wouldn't file -- I would not file a Twombly against this allegation in a proper case that said this is -- this should be a different track that alleged E compressors, you know, against Panasonic and Denso, although I think Denso has already settled so they probably would just be Panasonic and Denso as a co-conspirator but as Denso settled and cooperated with them, and that's the proper case; a case that could be defended, a case that could be settled, a case that makes judicial sense for this Court, and that's exactly what you looked at again when you didn't combine the 18 different allegations.

Finally, I just want to respond to the comments about the trade association. So there are a lot of companies that go to the same trade association meeting that are not related to each other in any way in product. For example, every year in Las Vegas there is a famous trade association called the Consumer Electronic Show. Lots of different companies go to that show. You may have someone there like Apple who makes phones and computers and things like that, and you may also have at that same show somebody who makes digital cameras or somebody who makes hovercrafts that work electronically or somebody who sells semiconductors that go into consumer products. You could have retailers who buy --

THE COURT: Well, that's a little bit different than a refrigeration show.

MR. KESSLER: No, but I'm suggesting, Your Honor, is that the association could have common industry issues. For example, one of the big issues with anyone who's involved in any business regarding refrigeration is the environment today because of the use of what type of chemicals you use in the products that they are working with for refrigeration to try to deal with global warming in those issues. So there are a lot of reasons why in a broad refrigeration industry -- it is really called the refrigeration air conditioning thing -- you could have people there who are making other types of products that use those refrigeration components too. All I'm saying is you can't draw from the fact that they simply attended this meeting, that that means there's some connective tissue regarding the alleged conspiracy here.

THE COURT: Okay. Thank you.

MR. VICTOR: May I have one moment with my colleague?

(An off-the-record discussion was held at 1:03 p.m.)

MR. KESSLER: Mr. Victor points out that -- and I don't know if you are referring to this, if that was in the complaint -- outside of the auto parts world there is a different Panasonic entity that had a plea agreement, I don't know if Your Honor is referring to it, that involved non-auto parts products involving refrigerators. And so they may have

cited that in one of their complaints as an unrelated product, but that plea had nothing to do with auto parts at all or had nothing to do with air conditioning.

THE COURT: It was in the complaint, I think that's where --

MR. KESSLER: It may have been, so Mr. Victor may be right, so but that product in that settlement involved parts -- it was compressor parts that went into a refrigerator that would like be in your home if you had a Frigidaire or something, and it had nothing to do with this case as well.

THE COURT: Okay.

MR. KESSLER: Thank you.

THE COURT: Thank you very much. The Court will issue opinions on that.

Is there anything else.

(No response.)

THE COURT: All right. Thank you. Have a good day and a safe trip back. Thank you.

THE LAW CLERK: All rise. Court is in recess.

(Proceedings concluded at 1:04 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of Automotive Parts Antitrust Litigation, Case No. 12-02311, on Wednesday, September 13, 2017.

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 10/04/2017

Detroit, Michigan